

EXHIBIT F

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC., Case No. 08-13555-scc

7 Debtor.

8 - - - - - x

9 LEHMAN BROTHERS HOLDINGS, INC.,

10 ET AL

11 VS. Adv. No. 13-01676-scc

12 CREDIT SUISSE AG, ET AL.

13 - - - - - x

14

15 United States Bankruptcy Court

16 One Bowling Green

17 New York, New York 10004-1408

18

19 March 20, 2018

20 1:29 PM

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23 B E F O R E:

24 HON. SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 IN RE: Adversary proceeding: 13-01676-scc, Lehman Brothers
2 Holdings, Inc., et al v. Credit Suisse AG, et al; Conference
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25 Transcribed by: Pamela A. Skaw

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1 P R O C E E D I N G S

2 THE COURT: So, this is the discovery conference.
3 So, we're going to -- we're going to be not having the phone
4 plugged in but we're making a record. Hi, Matt.

5 All right? How is everyone?

6 MS. CAFFERATA: Excuse me, Your Honor.

7 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

8 THE COURT: Okay. So, I understand that you've
9 worked out the issue with respect to the schedule for
10 completion of discovery; is that right?

11 MS. CAFFERATA: The schedule. Yes, Your Honor.

12 THE COURT: Okay. Can you let me know what you've
13 worked out?

14 MS. CAFFERATA: Sure. (Indiscernible) handy.

15 So, the completion of fact depositions would
16 extend from April 6th to May 7th.

17 THE COURT: Okay.

18 MS. CARRERATA: Defendant's expert reports would
19 be May 21st instead of the 4th.

20 Rebuttal expert reports would be July 2nd instead
21 of June 15.

22 Reply expert reports would be August 6th instead
23 of July 23rd.

24 Completion of expert depositions would be
25 September 17 instead of September 7th.

1 Dispositive motions would be August 6th instead of
2 July 30th.

3 Opposition for each would be August 27 instead of
4 August 20.

5 And reply briefs in support of dispositive motions
6 would be September 10 instead of September 3.

7 And the rest of the dates are the same.

8 THE COURT: Okay. And we can talk about this more
9 after we resolve what's still contested today but, even
10 though it's only March, October's remarkably around the
11 corner. So, we have a lot of planning to do in terms of
12 getting ready for the actual trial.

13 So, that's just something that we're going to need
14 to talk about; not today, in full, but we're going to need
15 to start really planning so that you can appropriately
16 prepare and so that we can begin to block out the amount of
17 time that we need, which is substantial.

18 MS. CAFFERATA: Thank you, Your Honor.

19 THE COURT: All right. Okay.

20 So, why don't you describe, I guess -- why don't
21 we have Lehman describe what's left of the matters that were
22 raised in the letters.

23 MS. CAFFERATA: So, we resolved both the schedule
24 issue and the deposition issue. And, so, the issues left
25 are with respect to the commodities compilation.

1 And we've prepared a Power Point that we think
2 will help simplify and streamline the discussion of what is
3 wrong with it.

4 THE COURT: Is it only -- is it only the
5 commodities compilation or is it the commodities compilation
6 as indicative of other compilations?

7 MS. CAFFERATA: Right now, it's the commodities
8 compilation. We're still reviewing some of the others.

9 THE COURT: Have there been any compilations that
10 have been satisfactory to you?

11 MS. CAFFERATA: I think we can say, not
12 completely.

13 Andy, would you like to address that issue?

14 MR. ROSSMAN: Sure.

15 No, Your Honor. I think the commodities one is
16 right and we've met and conferred on it and we've had a
17 chance to go through it in detail.

18 The other one, we're still plowing through and
19 we're pretty dissatisfied with those, too. But they're not
20 ripe for a resolution of the dispute.

21 THE COURT: So, explain to me how this works in
22 conjunction with being six weeks away from the completion of
23 all of the fact depositions because that's the part that I
24 don't understand.

25 So, my vision of this was that going into the fact

1 depositions, Credit Suisse would have provided what was, I
2 think, we agreed on in maybe the January conference. In
3 other words, I don't like the word compilation. But Credit
4 Suisse would have provided the reliance materials.

5 In other words, what -- either by product or by
6 desk or by trader, however it is, and it could be a mix, on
7 what it is that Credit Suisse relied on, at the time, during
8 Lehman week, for the closeout as distinguished from what you
9 might introduce at trial to demonstrate the reasonableness
10 of what you, in fact, relied on, right?

11 So, that's what I thought was happening. There
12 was some back and forth in the letters or in the meet and
13 confers about; well, it depends on what the meaning of
14 relied on is.

15 So, I'm confused as to how it could be that you
16 are rolling through these depositions without having that.
17 And I want to avoid -- I've wanted to avoid this for five
18 times now but I'm not succeeding.

19 So, I'm still going to keep trying. So, can
20 someone help me out on that? Mr. Rossman, I don't know if
21 it's you --

22 MR. ROSSMAN: Your Honor --

23 THE COURT: -- or Mr. McAtee.

24 MR. ROSSMAN: Sure. Your Honor, I'm going to
25 quickly turn this back over to Ms. Cafferata who's -- who is

1 more prepared generally than I am, probably always the case.
2 But the issue that we confront, Your Honor, is that we have
3 been trying to work this out for quite a long time and work
4 it out outside of this courtroom.

5 And we've also been persevering in trying to get
6 as much as we possibly can get done done in the time period
7 and we've really just been japed meaning, you know, Credit
8 Suisse has stopped paying the compilations on us which we
9 find to be very unsatisfactory, very late.

10 We're trying to go forward and get depositions
11 done. We've been doing as many as four a day to the extent
12 we can. Our game plan of doing the 30(b)(6)s first and,
13 then, having some time and space to get ready for the fact
14 depositions --

15 THE COURT: Right.

16 MS. ROSSMAN: -- has been foiled as well as our
17 game plan of having the benefit of the compilations and,
18 then, take the fact depositions.

19 So, basically trying to do everything we can at
20 once to meet the schedule.

21 THE COURT: So, here's --

22 MR. ROSSMAN: And it's been a great prejudice to
23 Lehman.

24 THE COURT: -- here's what -- okay.

25 So, here's what I'm worried about because the

1 issue of sanctions, preclusion, et cetera was raised.

2 So, what I don't want it to happen is, you know,
3 you take the 30(b)(6) -- you take the depositions that you
4 want to take based on what you have.

5 Then, we get to trial and, you know, Joe,
6 commodities trader, testifies and is shown a series of
7 documents and he gives testimony; oh, yes. Those are the
8 documents I relied on which is going to -- which is -- I'm
9 -- this is hypothetical, which is contrary to the experience
10 that you had at the deposition either because the documents
11 hadn't been identified or the witness, at that time, didn't
12 know the answers.

13 And, then, I want to avoid the situation where you
14 say the testimony on this should be precluded because we
15 weren't given the opportunity to examine him in the
16 deposition and Credit Suisse says, no, no, no. They had
17 everything they needed. They just neglected to ask Joe
18 commodities trader the questions.

19 That's a situation I do not want to be. So,
20 that's what need to -- we need to solve for a way to avoid
21 that because I cannot be in that position. And I'm going to
22 find it, without prejudging, I mean, I'm going to find it
23 unsatisfying to come to the conclusion that the Lehman side
24 didn't know what they were doing when they took the
25 deposition.

1 It's going to be -- I'm going to be interested
2 when, all of a sudden, a witness suddenly can testify to,
3 you know, 200 screens and broker screens and emails that he
4 says he relied on that was never identified to them.

5 So, if I'm not making sense, please tell me now
6 because it's better to correct me now before I keep going
7 down this path, okay?

8 MR. MCATEE: Your Honor, I think you're making
9 perfect sense. We agree with everything you've said.

10 These compilations, as a tool to help them in
11 discovery, were first requested on January 10th, at a break.
12 I was here. Counsel for Lehman was here.

13 THE COURT: But here's the --

14 MR. MCATEE: And we --

15 THE COURT: -- thing. And --

16 MR. MCATEE: -- we --

17 THE COURT: -- and, now, I feel like I'm -- I feel
18 like I'm the broken record. I said this in January. It
19 cannot be that ten years after the fact you are just
20 compiling this.

21 The closeouts took place on September 16th or
22 otherwise during Lehman week. So, there exists this stuff,
23 these screens, these emails, these directions. Whatever it
24 was.

25 So, the notion that Lehman just requested this --

1 Lehman requested this in the DQ along with the proof of
2 claim. It didn't get it not only for you but for a lot of
3 the larger counterparties.

4 They moved on from that and, then, everything
5 should have been provided.

6 So, I'm really not open to the idea that they only
7 just asked for it when that should have been produced to
8 them a long time before that. So --

9 MR. MCATEE: It was produced to them a long time
10 before that. What wasn't done was identify on a trade-by-
11 trade basis, each Bates number, for each trade. That's what
12 was requested on January 10th --

13 THE COURT: So -- okay.

14 MR. MCATEE: -- and we did it in 26 days for every
15 product.

16 THE COURT: So, now what -- now what I'm hearing
17 Lehman complain about is that included in that compilation
18 or that production, however you want to characterize it, are
19 documents that could not have been relied upon because they,
20 for example, post date the closeout.

21 So, as an example, that's true. It could not have
22 -- screens from the end of September could not have been
23 relied on, right?

24 MR. MCATEE: I agree, Your Honor. The ones that
25 they were talking about were screens actually from the 16th

1 that were really quotes from the 15th that were used to
2 verify the prices on the 15th. And, in that sense, they
3 were relied upon.

4 But we've identified those and agreed to take
5 those out.

6 But they were relied upon because they were used
7 to validate the (indiscernible). We didn't put in any from
8 the end of September.

9 THE COURT: Go ahead, Ms. Cafferata.

10 MS. CAFFERATA: Your Honor, this is a complex
11 issue and I renew my request to use our Power Point because
12 I think --

13 THE COURT: Sure.

14 MS. CAFFERATA: -- it helps.

15 THE COURT: Let's do it.

16 (Pause.)

17 MS. CAFFERATA: May I approach, Your Honor?

18 (Pause.)

19 THE COURT: The other thing though is the mere
20 existence of screens and Bloomberg messages that have the
21 appropriate dates, without there being someone who can
22 testify that they, in fact, used them to do the closeout,
23 that doesn't carry the day on the issue of reasonable
24 process.

25 I've used the example before that you can't just

1 throw a dart at a dart board, you know, get a price and,
2 then, you know, go back and comb through all the screens
3 that you can find and say, oh, look, you know, we got the
4 dart board. We got the dart to hit it in the right spot.

5 In my mind, subject to whatever arguments you're
6 going to make, it requires actual proof of what was done
7 actually on the day.

8 So, you know, reasonable process, reasonable
9 result in good faith.

10 So, that's my view of the burden of proof with
11 respect to the closeout.

12 So, I hear you on the post dating but there also
13 has to be linkage, right --

14 MR. MCATEE: Yes.

15 THE COURT: -- between what the compilation, to
16 use your word, and how it was used and who can own it, you
17 know, for that day.

18 MR. MCATEE: We completely agree, Your Honor.

19 THE COURT: Okay.

20 MR. MCATEE: And there will be that linkage. It's
21 not just throwing darts at a board. We --

22 THE COURT: I wasn't suggesting -- I use it as an
23 extreme illustrative example.

24 MR. MCATEE: In commodities, the traders were
25 asked to gather quotes. They did that. They collected them

1 and they used those to inform their judgment to mark the
2 positions at the end of the day. That's what they did and
3 that's what the proof at trial will show.

4 THE COURT: Are there -- is there proof of -- and
5 I'll let you get to your Power Point, Ms. Cafferata, I just
6 want to keep asking these questions.

7 Is there -- are there documents that evidence the
8 transmittal of the backup to person or persons who were in
9 charge of actually collecting it for the purposes of
10 documenting the closeout?

11 MR. MCATEE: Yes.

12 THE COURT: There are?

13 MR. MCATEE: Yes, there are.

14 THE COURT: Okay.

15 MR. MCATEE: On the day. It was sent to the COO,
16 Mr. Patel, who was deposed by counsel for Lehman, asked all
17 about it. There's -- there was a spreadsheet that was then
18 prepared --

19 THE COURT: Okay.

20 MR. MCATEE: -- after that, several months after
21 that, but by a junior person to kind of collate and put all
22 that in one place. It didn't have everything but it was a
23 decent effort and that was provided to Lehman as well.

24 THE COURT: Okay. Go ahead.

25 MS. CAFFERATA: Thank you, Your Honor.

1 So, we basically covered the first two slides.

2 On page three, I think this goes to your point.

3 Credit Suisse absolutely had preserved the supporting
4 documentation for its claim. They were instructed -- these
5 are high level --

6 THE COURT: Uh-huh.

7 MS. CAFFERATA: -- Credit Suisse people quoted to
8 save all documentation.

9 The Taoko (ph) spreadsheet is on page four and
10 this is Mr. Patel's actual testimony at deposition, contrary
11 to counsel's suggestion, that it wasn't everything. It was
12 his best shot.

13 He said, following the default, I wanted to have a
14 single place where we stored all of the data, all of the
15 backup quotes, that we obtained for the Lehman bankruptcy.

16 And, then, in the highlighted language below; I
17 wanted to make sure that at least all the quotes that we had
18 obtained for Lehman were in one place.

19 So, the object of the Taoko spreadsheet that was
20 prepared in 2009 would have been the absolute total universe
21 of what was actually relief on which, we agree with Your
22 Honor, is the test here. That was what they were required
23 to do.

24 THE COURT: Okay.

25 MS. CAFFERATA: And I think we can go past slide

1 number 5 which is --

2 THE COURT: So --

3 MS. CAFFERATA: Yes.

4 THE COURT: So, let's make sure we're saying the
5 same thing.

6 So, do you have this place? Do you have this
7 data?

8 MS. CAFFERATA: We have the Taoko spreadsheet
9 which they've disavowed.

10 MR. MCATEE: We didn't disavow it, Your Honor. We
11 just said it didn't have everything in it. It was a best
12 effort at the time to compile what was sent to Mr. Patel.
13 But it didn't have everything. But it was a good start and
14 they have it and they've had it for over a year.

15 THE COURT: Okay. Time out. I don't understand
16 this.

17 So, in real time, not everything made it into the
18 spreadsheet. Then what happened? Then, in connection with
19 this litigation, people did what? They went --

20 MR. MCATEE: We restored databases. We restored
21 email accounts. We produced over 30 million pages. And,
22 then, when they asked us for absolutely everything we had
23 that supported the closeout, we went and looked and found it
24 and added it.

25 THE COURT: Okay. Now, we're getting -- we're not

1 using precise enough words.

2 It's not everything that supported the closeout.
3 It's everything on which the traders relied to conduct the
4 closeout.

5 So, we're back to the shoebox, right? If
6 everything didn't make it into the spreadsheet, the only
7 additional data that should have gone into the spreadsheet
8 was data that traders or other persons engaged in the
9 closeout had that they, in fact, had used and had for some
10 reason failed to put in the spreadsheet.

11 It's not everything that everybody could find at
12 the time. It's not market color. It's not Bloomberg
13 messages that people didn't rely on. It's not everything
14 that supports the claim. That's a backward-looking thing.

15 We have -- it has to be everything that the
16 traders --

17 MR. MCATEE: Sure.

18 THE COURT: -- relied on. It's a different thing.

19 MS. CAFFERATA: Correct, Your Honor.

20 THE COURT: I mean, I'm not saying that you're not
21 entitled to put that in at trial but they're entitled to
22 know what was relied on and what wasn't.

23 MS. CAFFERATA: And that's what they were --

24 MR. MCATEE: That's what we tried to do.

25 MS. CAFFERATA: That's what --

1 MR. MCATEE: That's what we tried to put in a
2 compilation.

3 MS. CAFFERATA: That's what they were ordered to
4 do on January 10 and if it had been that the Taoko
5 spreadsheet was what they wanted to say they had actually
6 relied upon, they would have said; Your Honor, we're done.

7 But, instead, they argued to you, Your Honor, that
8 it would be thousands and thousands of documents. And, as
9 you may recall, I argued, no, it's not. It's a handful of
10 documents for each trade. We're looking for what was
11 actually relied on.

12 THE COURT: So, that's the thing.

13 MS. CAFFERATA: So --

14 THE COURT: It's a --

15 MS. CAFFERATA: -- it's a red herring.

16 THE COURT: -- it -- I mean, there's a lot --
17 there's a lot of trades. But it really is a handful of
18 documents for each trade.

19 MR. MCATEE: This is what it is, Your Honor. This
20 is the compilation for commodities. That's what we provided
21 to them.

22 THE COURT: How many trades?

23 MR. MCATEE: This is 1,240 trades and it's about
24 600 documents.

25 There are some spreadsheets that aren't in here

1 because I didn't print them. But this is -- about the
2 ballpark quantity we're talking about. It's not a gigantic
3 set as they portrayed in their letter.

4 It was the best effort that we had to come up with
5 what was relied upon at the time. But it wasn't just one or
6 two quotes. It was a lot of information because they had to
7 use their judgment to mark the books.

8 MS. CAFFERATA: Your Honor, if I may continue, I
9 think I can --

10 THE COURT: Okay. Go --

11 MS. CAFFERATA: -- provide some backup material
12 that's helpful.

13 THE COURT: -- let's -- let's try to keep going.

14 MS. CAFFERATA: On page six, there are quotes from
15 Mr. McAtee explaining what it is they did in preparing that
16 pile of documents.

17 They stated Cravath and Cornerstone, their
18 consultant, identified the documents to be included in the
19 PG&E spreadsheet, based on the guidance provided by
20 Mr. Patel and Mr. Allen in these conversations.

21 Credit Suisse never represented that a current
22 employee would be responsible for the mechanics of preparing
23 the spreadsheet and this emphasized to us that they -- in
24 order to produce these compilations in less than four weeks,
25 they had to distill from over three -- thirty million pages

1 of documents, and enormous databases of information, that
2 pile of documents.

3 And, when we asked Mr. Patel, well, was anyone at
4 Credit Suisse actually involved in the preparation of this
5 batch of documents? When they came up with this pile, did
6 anyone actually lay eyes on it that was a trader or knew
7 anything about what they actually relied on? He said, I'm
8 not aware that anyone at Credit Suisse reviewed this.

9 And, so, what we have on slide seven is an idea of
10 how many documents on the left side were identified for
11 however many trades. So, for example, for 221 of the
12 trades, there were 150 documents that were identified as
13 claim support. And the average number of documents that
14 were identified for each trade was 140.

15 THE COURT: Where are you now? I lost you.

16 MS. CAFFERATA: This is on page seven.

17 THE COURT: Yeah. Could you start over again? I
18 just -- I didn't --

19 MS. CAFFERATA: Sure.

20 This -- on the right side, on this column, we show
21 the number of trades for which the -- this is the amount of
22 documents that were identified for each of those trades.

23 So, on the first line, for two of the trades, they
24 identified 155 documents to us.

25 The average, per trade, was 140. That's in the

1 headline. So, 140 documents we had to sift through and try
2 to figure out what made any sense preparing for our
3 depositions.

4 And, so, taking an example, on page eight, this
5 was for a California hub trade and 108 documents were
6 identified in the claim support for this one trade. This is
7 the Venn diagram.

8 Then of them in the little circle were duplicates.
9 So, that leaves us with 98. Of the 98, they suffered from
10 one or two major flaws, with the exception of 15 of them.
11 So, you can see 25 were on the wrong product; 16 had no
12 price data; 16 had no 9-15 values; 6 were postdated; and 22
13 were the wrong delivery period. And there's some overlap
14 because sometimes they suffered from two of these defects.

15 The result, and this is being as generous as we
16 know how to be, 15 are things they plausibly could have
17 relied on. This number includes things that a trader would
18 look at and say, no, not really. But they just didn't
19 suffer from these huge defects. So, 15 is generous.

20 Counsel has emphasized the postdating as something
21 he can cure by filtering and he sent us a letter saying,
22 they've now filtered that out and they've identified four as
23 the Bates numbers of the documents that just had the
24 postdating problem. And that was 102 of the 608 documents
25 that they gave to us.

1 Turning to -- and that was slide nine. Slide ten,
2 this is a cherrypicked trade. This is -- and not only
3 cherrypicked, this is not just the one that they wanted to
4 trot out as a fine example. This is the one trade where
5 they actually had a trader who looked at it and said, this
6 is what he actually did and actually looked at.

7 These are their bullet points from their letter to
8 the Court and this -- and, on the left side, in the red
9 boxes, are the truths about those documents.

10 Some of these items are just things you don't look
11 at the -- they couldn't have looked at at the time. For
12 example, the closeout values for all the terminated trades.

13 We have system extracts which is not what traders
14 looked at at the time.

15 On the first line, we have ten quotes from dealers
16 and brokers; seven of the ten are duplicates or unrelated
17 quotes. I mean, there's a whole bunch of chaff in here.
18 And, so, the upshot of this is that approximately ten of the
19 quoted documents are things that could have plausibly have
20 been relied upon at the time.

21 So, turning to slide eleven --

22 THE COURT: I mean, how many do we -- for example,
23 this was a position closed out by Fred Allen.

24 MR. MCATEE: Yes, Your Honor.

25 THE COURT: Who's -- who was Fred Allen?

1 MR. MCATEE: He is the only power, gas and
2 emissions trader who is left at Credit Suisse.

3 THE COURT: Who's left now?

4 MR. MCATEE: Correct.

5 THE COURT: Okay. At the time, how many trades
6 did he have to closeout?

7 MR. MCATEE: I'm not sure, Your Honor. But he was
8 an emissions trader, not power and gas.

9 THE COURT: Uh-huh.

10 MR. MCATEE: But this is an emissions put option.
11 So, it would --

12 THE COURT: Yeah.

13 MR. MCATEE: -- have been one he would have closed
14 out. And he was consulted in connection with preparing the
15 compilation.

16 THE COURT: But I guess the point is that --

17 MR. MCATEE: Maybe I can clear up if I -- one
18 point of confusion.

19 THE COURT: Uh-huh.

20 MR. MCATEE: Not all of these were to support the
21 backup because we had to do a compilation that had mid-
22 values. It had to have the bid offer related information.
23 It had to have the risk metrics which they also asked for.

24 We identified the indoor extracts that related to
25 the particular trades.

1 All of those are included in this list of
2 documents. And, at the top, are the kind of quotes and
3 price data. Some of them were duplicates because they were
4 shared among traders. They were sent around with emails
5 saying here are the quotes I got. We listed all of those.

6 So, she's right. There's -- a couple of those are
7 duplicates.

8 But this is the information, all in one place,
9 that relates to this one trade that informed Mr. Allen's
10 judgement in closing it out. And that's what we thought we
11 were asked to do and, so, that's what we did.

12 THE COURT: So, the testimony -- Mr. Allen will
13 testify that he relied on all -- that all -- each and every
14 one of these 40 documents, in real time, on -- in Lehman
15 week, when he was closing out, he relied on all these?

16 MR. MCATEE: Some of the documents, Your Honor,
17 are the trade at -- are -- postdate that -- if they -- they
18 support the trade attributes in Credit Suisse's systems.
19 So, I want to separate that from the quotes and --

20 THE COURT: What do you mean by --

21 MR. MCATEE: -- the dealer runs.

22 THE COURT: -- support the trade attributes in
23 Credit Suisse's system?

24 MR. MCATEE: So, if they ask for where's your mid-
25 value, we'll cite the indoor database and give them a Bates

1 number as to where the mid is in our system.

2 THE COURT: Right. But --

3 MR. MCATEE: That wasn't relied upon. That was
4 what was created after the trade was closed out.

5 THE COURT: Right. I -- I'm continuing to seek to
6 distinguish between broader support materials and what was
7 relied upon when the trade was closed out which in my
8 simple-minded way of thinking about it, you know, you got a
9 lot -- there was a lot of bid offer out there. There were
10 broker screens.

11 The trader had evaluated what he was looking for
12 and he either -- you know, he hit the bid, he lifted the
13 offer. There it was. Done. And, then, that's it.

14 It's just not -- I don't --

15 MR. MCATEE: There were other things that went in
16 -- it was a little more complicated. He had -- this was a
17 put option. He had to have volatility information; that
18 some of these documents on this list were the volatility
19 numbers that he used.

20 THE COURT: Okay.

21 MR. MCATEE: So, yes, he will testify that the --
22 this was the source of data he had that informed his
23 judgment when closing out. That's what he'll testify to.

24 MS. CAFFERATA: So, I think Your Honor hit it
25 right on the head. Mids, risk sensitivity spreadsheets are

1 just entirely separate from what this exercise was supposed
2 to be.

3 MR. MCATEE: You asked for it.

4 MS. CAFFERATA: And we did --

5 MR. MCATEE: They asked for all of it.

6 MS. CAFFERATA: -- not ask for it. I'm happy to
7 go back to January --

8 THE COURT: Let's not talk over each other.

9 MS. CAFFERATA: -- to -- yeah. We can go back a
10 few slides and show what I actually argued to see the truth
11 of what I said.

12 But we did not ask for everything. We did not ask
13 for comprehensive. We asked for a complete set of what was
14 actually relied upon and, as Mr. McAtee has just argued, or,
15 I'm sorry, admitted, they did -- they included a bunch of
16 other things.

17 And this particular example is the one that
18 actually they had a trader left who could speak to it.

19 Now, if they don't know what they actually relied
20 on, and those traders have left, then the solution would be
21 to have zero documents identified in this spreadsheet.

22 If they really can't go back and tell us what they
23 actually relied upon, then that's their problem. It's their
24 burden.

25 THE COURT: So --

1 MS. CAFFERATA: And that's not what they did.

2 THE COURT: So, what -- okay.

3 MS. CAFFERATA: This is the best example they'll
4 have, Your Honor.

5 THE COURT: So, what -- what's the answer for not
6 having someone who can give testimony as to what was
7 actually relied upon?

8 MR. MCATEE: I --

9 THE COURT: Is the answer testimony from someone
10 who says this is what the trader would have relief upon?

11 MR. MCATEE: There may be some of that at trial,
12 Your Honor. But they're also -- Lehman is deposing and
13 we're asking -- we will ask questions at those depositions
14 of traders who were formerly at CS and they will testify
15 about what they relied upon.

16 So, they'll -- that will be part of the record as
17 well. Some of those individuals are in New York. They
18 could be subpoenaed to come to testify at trial.

19 THE COURT: But it's your burden. I mean, if you
20 can't --

21 MR. MCATEE: I understand.

22 THE COURT: -- put someone up there to say what
23 was -- what was relied upon. I mean, you can argue
24 otherwise. But --

25 Look, I mean, there's -- Mr. McAtee is correct

1 that they needed to provide everything to you. But
2 Ms. Cafferata is correct in that my direction was to provide
3 specifically the reliance materials and not having it be a
4 treasure hunt in a bigger data set to figure out what the
5 reliance materials were.

6 That literally they should have been -- be able to
7 go into each and every deposition with a packet this thick
8 and say, you know -- and go through all the screens and
9 whatever other communication there was relating to the
10 closeout.

11 If there were adjustments for liquidity or in the
12 -- you're mentioning volatility or whatever it was.

13 MR. MCATEE: And, on that issue, Your Honor --

14 THE COURT: (Indiscernible).

15 MR. MCATEE: -- I just want to mention that we
16 have had meet and confers on this and that is one of the
17 things that I offered to them.

18 If there was a different way to package this, to
19 put asterisks next to what they're really interested in, if
20 they really are interested in the quotes, I'll put asterisks
21 next to the quotes and so we don't have to worry about the
22 volatility or the trade attributes, I offered to do that.

23 THE COURT: They're interested in knowing what the
24 trader relied on. Period. It's just not that complicated.
25 It's -- I -- I mean, it's not -- it can't be a guessing game

1 when they go into the deposition and, then, hear, for the
2 first time at trial, that we relied on this and we didn't
3 rely on that.

4 MR. MCATEE: Okay. So, in the instance of the
5 trade we were just talking about, the ten quotes, which are
6 really four or five because there was some sharing of the
7 same information; those have been identified. They know
8 what they are. They can ask the trader about those quotes.
9 That has been done.

10 The history of this compilation though goes back
11 to a much broader set of materials than just those quotes.

12 Her -- Ms. Cafferata's letter to me, which was on
13 the 15th, it was four days after; we had nine days to put
14 this together. This was in the middle of that period. It
15 must include any data or documentation relied upon in
16 calculating closeout values, including any and all screen
17 shots; any and all Bloomburys; market data feeds; third
18 party data; auction results; bid offer quotes; other emails;
19 other communications; anything used by Credit Suisse to
20 support its closeout value -- valuations.

21 That's the letter we got. That's what we thought
22 we were doing and that's what we provided.

23 THE COURT: Okay. I feel like that you're running
24 in circles and --

25 MS. CAFFERATA: Your Honor, may I --

1 THE COURT: -- and my view of it is that you were
2 obligated to give them everything and you were obligated to
3 give them specifically what was relied on, in real time, to
4 do the closeout. Those two things. You were -- it is not
5 view that it was going to be okay to provide the broader
6 data set or a broader set of Bates numbers and for them to
7 have to figure out what might have been relied on. That's
8 my view.

9 If that -- if the latter, what I just described,
10 has not happened yet, that's a problem.

11 MS. CAFFERATA: Your Honor, may -- may I make two
12 points?

13 THE COURT: Yes. Go ahead.

14 MS. CAFFERATA: Two things. One is that it's not
15 -- well, the main point is that it is not an inclusiveness
16 issue.

17 My first point is, yes, I think the way -- the
18 best way to look at it or -- and maybe this is an over
19 simplification, but if I ask you for the complete train
20 schedule, I expect the train schedule. I don't expect a
21 bunch of other things about trains and how many trains they
22 had coming out of each station at -- at different times for
23 different reasons. I expected the train schedule and I
24 expect to be able to see that.

25 And, so, all of these arguments about everything

1 and we asked for a comprehensive thing is really just
2 muddying the waters.

3 The bigger point is that it's really not an over
4 inclusiveness problem alone. It's also that now their
5 witnesses have run away from the claim support.

6 So, for example, in credit, we had Steven Feinberg
7 (ph). If you turn to page twelve of the Power Point, we put
8 in front of him some of the items that had been identified
9 as claim support for a particular trade. And he took one
10 look at it and he said, I don't know what GSLECX-2 is. So,
11 I wouldn't rely on it because I don't know what it is.

12 Clearly, he'd never laid eyes on the pile of
13 documents.

14 THE COURT: What's that? Just for me further
15 education; what's pie grade trading?

16 MR. MCATEE: It's a credit product, Your Honor.
17 It doesn't relate to the commodities compilation.

18 MS. CAFFERATA: This is -- yes. This is another
19 product. But this -- I'm trying to explain where this is
20 going.

21 THE COURT: Yeah. No. I understand.

22 MS. CAFFERATA: Because I think it's very
23 instructive.

24 THE COURT: I -- no. I understand. So --

25 MS. CAFFERATA: Yep.

1 THE COURT: -- that's -- this is my question about
2 how you're going to roll through the depositions without
3 having the reliance materials because you're stuck with
4 every document --

5 MS. CAFFERATA: Well --

6 THE COURT: -- in the compilation and that you
7 have to literally go through the deposition and say; did you
8 rely on this? Did you rely on this? Right?

9 MS. CAFFERATA: Right. And you'll see what the
10 witness does and where we're going with this and why they're
11 going to need -- there needs to be some kind of preclusive
12 sanction. That's the only answer.

13 They have the burden in providing this. They
14 haven't provided it and they're not going to be able explain
15 it. The witnesses cannot support what they've done here.

16 So -- I don't need that.

17 And this -- on page thirteen -- all right.

18 There were 531 documents that were provided for
19 Goldman Sachs. And we had identified to them, in response
20 to their request that their 30(b)(6)s have some kind of
21 example to look at in terms of their preparation; what they
22 were really going to be responsible for answering to at
23 their deposition. We were -- we'll relate it to an example.
24 And we said fine.

25 So, this was pertaining to that example and 531

1 documents were identified for this particular trade
2 (indiscernible).

3 And, so, on a second document that we pulled out,
4 we pulled out another example and if you can see if there --
5 it's just clearly not something that's pertinent and
6 Mr. Feinberg agrees. This looks to me like something around
7 currency trading. So, no. I wouldn't have used this in the
8 closeout.

9 And we put about 20 documents in front. These are
10 just a few examples.

11 On fourteen -- actually, skip over fourteen.
12 That's a different example.

13 On page fifteen, Your Honor, we put in front of
14 him what is in the right top corner. This is his run and
15 these are the prices at which he was hoping to supposedly
16 buy. And we asked; if this is -- do you know if this is one
17 of the documents that you relied on in pricing your Lehman
18 position? And he admits this was his 1123X potentially it
19 was included.

20 So, he starts to embrace this document as; there's
21 the support, even though all those documents were not things
22 I would have looked at or did look at.

23 Then, on cross-examination, Mr. Nassab (ph)asked
24 him; I wanted to draw your attention to the time. This was
25 supposed to be an 11 a.m. closeout. And ask whether that

1 changes your answer.

2 And the witness said, it would change my answer
3 because it was already past the time we had done the
4 closeout.

5 And, you see, that's because this -- these numbers
6 were actually the numbers at which they would have sold and
7 it's not a good document for them.

8 And, so, they ran away from it. And you can see
9 that on the follow up examination, Mr. Feinberg had
10 disavowed the document that he thought he had potentially
11 used.

12 And, so, what we're seeing here is counsel and
13 consultants came up with, you know, not just came up with,
14 combed through 30 million documents, ran some searches, you
15 know, run everything that has GS in it. Dump it on us and,
16 then, when we actually are able to figure out, okay; well,
17 here are the handful of documents that we think you might
18 actually have used, they didn't use those things. Or they
19 have some other explanation.

20 And the explanation has been that there's a little
21 bit different definition around relied upon and we just --
22 we just don't know how it's possible that all of us seem to
23 understand what it was that was actually required here.
24 It's wilful. You know, Credit Suisse has told us they had a
25 partner approve this and so they included all these things

1 knowing full well that this could be the result.

2 And, at the last hearing, I explained that, at
3 some point, Credit Suisse needs to shoulder its own burdens
4 instead of Lehman. We have -- you know, we're trying to put
5 on a very complex case with thousands of trades. This is
6 something they should have done way back in the day; not
7 something they should have created and given to us now.

8 And they're the ones asking for a billion dollars.
9 They're the ones who have the burden. And the time has come
10 for them to deal with the consequences of not having any
11 adequate story around what they did. If they don't have a
12 reasonable basis, they don't have a reasonable basis. And
13 that is what is required here.

14 So, we seek leave, Your Honor, to brief the issues
15 so that we can address the issues of the appropriate
16 monetary sanctions that we -- as we've wasted a lot of money
17 dealing with this frivolous production and also the question
18 of how to deal with the preclusion issue.

19 (Pause)

20 MR. MCATEE: Your Honor, all of the examples she
21 just went through were credit. That's a completely
22 different product area. I thought we were here to talk
23 about commodities.

24 I think there's an answer to all of those. It's
25 just that this wasn't shared with us in advance and I don't

1 know what the answer is. But there is an answer to those
2 very few examples she just -- she just pointed out.

3 It's not true that the credit compilation was
4 prepared by just Cravath and Cornerstone. We had multiple
5 CS employees there at the time who worked on these trades
6 help us prepare the compilation and put the right documents
7 in.

8 THE COURT: Yeah. Look. Let me --

9 MR. MCATEE: So --

10 THE COURT: Let me --

11 MR. MCATEE: -- that's what happened.

12 THE COURT: -- let me --

13 MS. CAFFERATA: Your Honor, if you look on page
14 eleven --

15 THE COURT: Uh-huh.

16 MS. CAFFERATA: -- this is the commodities
17 closeout where they just disavowed the support completely.
18 This is their 30(b)(6) on the subject and he -- and we asked
19 him; are there any SP15 quotes in this document? I could
20 tell you.

21 And that if this is included in the documents,
22 then these would be relevant for that pricing. And we
23 asked; well, what gives you that confidence? Because this
24 would have been prepared by counsel and by Cornerstone, our
25 consultant.

1 And, then, we said; were the values in this email,
2 in fact, used to value this trade explicitly? I don't know.

3 So, that's what we're dealing with commodities and
4 I just jumped over it because I think the credit example
5 that we have of Feinberg is really telling that they're --
6 they're just going to try to change their story and never
7 identify what support they have.

8 THE COURT: But --

9 MR. MCATEE: Can I just address that example
10 because --

11 THE COURT: Yes.

12 MR. MCATEE: -- I did come ready for that when I
13 looked at that one. That is a commodities example. She
14 asked that question. It was a gas quote and it was a power
15 trade.

16 Mr. Patel was not a trader. He was the COO. He
17 was our 30(b)(6) but he was not a trader.

18 If you would ask a trader about that document, you
19 -- she would have learned that gas quotes can be used for
20 power trades because they're -- the markets are inter-
21 related and those -- those quotes can be used for both
22 purposes.

23 So, that's the answer to that one. That's why
24 it's in the backup. It wasn't just randomly plucked and put
25 in there to deliberately confuse them.

1 THE COURT: Okay.

2 MS. CAFFERATA: Well, that's a 30(b)96). He
3 should have been prepared on that then and been able to
4 testify to it.

5 THE COURT: Look. I -- this is -- from where I am
6 sitting, I'm in an impossible situation because this is the
7 continuing -- this is the same theme and the same words that
8 we've had in every conference.

9 And, you know, as I said to you before, in all of
10 the derivative cases, this is now the seventh one, combined,
11 I didn't have this much trouble.

12 So, I continue to not understand this. I just
13 don't -- I just don't understand it.

14 But I do -- will tell you is in turning to page
15 eighteen of this Power Point, where Lehman's requesting
16 motion for leave to file for sanctions seeking -- including
17 that Credit Suisse should be precluded from offering its
18 compilation as evidence of the information its traders
19 relied on, there's no way the compilation is going to
20 evidence.

21 MR. MCATEE: We're not asking for that, Your
22 Honor.

23 THE COURT: Okay. I mean, there -- there is no
24 way. I mean, it -- the only thing that comes in as evidence
25 in the form of a "compilation" is something as to which

1 somebody can testify was created at the time.

2 If a desk had a spreadsheet. If a unit -- I don't
3 know how business is organized, if a trader had a log,
4 whatever it was, that comes in. But not something that was
5 created by counsel. So, that's a non-issue. That's just --
6 that's a complete non-issue.

7 MS. CAFFERATA: Well, I think, Your Honor, we're
8 -- and we would like the opportunity to brief this so that
9 we can be more delicate --

10 THE COURT: Well, I'm --

11 MS. CAFFERATA: -- in how we explain this. But
12 what we're saying is the information in the compilation, the
13 piles and piles of documents that clearly don't relate and
14 the ones that they want -- disavowed later, all of those
15 should be eliminated because they were asked to provide what
16 they actually relied on --

17 THE COURT: Well, now, I'm not --

18 MS. CAFFERATA: -- and they failed. So, if they
19 failed, they failed.

20 THE COURT: But, now, that's different from the
21 words on this page. Being that now we're confronting the
22 situation where they're going to put on a witness to give
23 testimony about the -- a particular part of the closeout and
24 he's going to be shown a bunch of documents and he's going
25 say those are what I relied on, right?

1 And, then, I'm going to be confronted with the
2 issue I want to avoid which is that they had no way of
3 knowing that those were the particular documents a trader
4 was going to rely on. And if they took the deposition of
5 that person, it had to have been the case that, at the time
6 of the deposition, they were able to show the witness that
7 set of documents.

8 If that's not true, then that witness's testimony
9 is going to be precluded. That's the blueprint. That's
10 just -- that's the blueprint.

11 So, if they can't do it because they have a
12 thousand documents for one witness who closed out five
13 trades, they can't do it.

14 MR. MCATEE: They --

15 THE COURT: I mean, it's just --

16 MR. MCATEE: They have 600 documents for 1,200
17 trades. It's that pile right there. They know which
18 traders closed out the -- which positions. We've listed
19 each Bates number by trade. They know how to depose
20 witnesses. They've done it. They've asked the traders
21 about those documents.

22 THE COURT: Okay. I hear you.

23 MR. MCATEE: They know.

24 THE COURT: We -- that's not an unreasonable pile
25 for a thousand trades. I agree with you.

1 MR. MCATEE: And the piles for rates and FX and
2 the other areas are less.

3 THE COURT: Then, what --

4 MR. MCATEE: There's only 60 documents for all of
5 rates.

6 THE COURT: Then, why are we talking -- but here's
7 the disconnect. Why are you telling me that you had to comb
8 through 30 million documents? I don't understand that.

9 MR. MCATEE: Because at the time the -- back in
10 September of 2008, when we made an effort, Mr. Taoko did it.
11 He didn't include all the quotes. He only had most of them.

12 So, we went back through the files, found the
13 quotes that were also used, also relied upon on the 15th and
14 added those to the stack.

15 THE COURT: Where does the 30 million documents
16 come in?

17 MR. MCATEE: That's what was -- that's the
18 databases and the emails that were restored in archive over
19 the course of the last year.

20 We searched those for September 15th, found the
21 quotes, put those with the right trades and added those to
22 the spreadsheet. And it ended up with this pile of
23 documents right here.

24 It's a little bigger than that because there are
25 some spreadsheets and things that aren't in here. But

1 that's the right size. This isn't a game. They're not in
2 the dark. They're -- and all the things she wrote in her
3 brief about they're completely unaware is not true.

4 This is the stack. They've been using them in
5 depositions. There is no prejudice, Your Honor.

6 MS. CAFFERATA: Your Honor, by his own admission,
7 we saw the letter, he said that 122 of the 608 documents
8 were postdated. They did not exist at the time. They're
9 not what was relied on.

10 Why are you combing through 30 million documents?
11 Why? Because you're telling a story. Because the answer is
12 that you don't have support for what you did. And you don't
13 want to show the documentation that those senior business
14 people said, make sure you save all the documentation.
15 Instead of pulling that out, and making sure it was
16 delivered --

17 THE COURT: And, see, here's the part -- here's
18 the part I don't understand.

19 MS. CAFFERATA: -- we got a pile.

20 THE COURT: Here's the part I don't understand.
21 If you -- I think it's in the book. There's an email that
22 says everybody save your screens and then send them to me.
23 I think --

24 MR. MCATEE: True.

25 THE COURT: Right?

1 MR. MCATEE: Yes.

2 THE COURT: I don't understand why it would take
3 combing through 30 million documents when you can search for
4 those custodians and those senders and those -- I just -- I
5 don't understand it.

6 If -- everything I've seen before this case
7 involved discreet deliveries of documents to desk heads or
8 whoever it was that went up the chain that then put it into
9 the spreadsheets that led to the claim. Not 30 million
10 documents.

11 Sure. A bigger data set when you're talking about
12 justifying, you know, adding liquidity premium or however
13 else you're going to, you know, adjust your price or your
14 closeout.

15 But for just the basic closeout, I just -- I don't
16 understand it and it's not going to be very credible just to
17 have somebody look at a screen that has the right date and
18 say; well, I must have relied on it.

19 MR. MCATEE: I don't think we're saying that, Your
20 Honor.

21 And the 30 million was just a reference to how we
22 found the other quotes.

23 THE COURT: Yeah. I get it. Yeah. I get it.

24 MR. MCATEE: So, Mr. Taoko and others, back at the
25 time, did their best --

1 THE COURT: Well, what's your response to --

2 MR. MCATEE: -- but they missed a few.

3 THE COURT: -- the fact that Ms. Cafferata has
4 identified a set of documents and demonstrated that a whole
5 bunch of them could not possibly have been relied on?

6 MR. MCATEE: So, if that's -- I'm glad you
7 mentioned that, Your Honor. I mentioned that earlier.

8 But that's what I was referring to when it depends
9 -- and I said it depends upon your definition of relied
10 upon. Those were the documents that came in on the 16th
11 with prices for the 15th that were relied upon in order to
12 validate the numbers used on the 15th. That's why those
13 were included.

14 Counsel sent me a letter about that. I agreed to
15 take those out. I identified which ones they were. And,
16 so, those are now -- should not be an issue. Those are out.
17 But they were relied upon because they were used to validate
18 the numbers. That's what that issue is.

19 MS. CAFFERATA: Well, Your Honor, if we look back
20 at slide eight, there are a number of problems. That's just
21 one of the problems and it's a relatively small one.

22 There are -- there are issues about -- there's no
23 price data in many of these documents. It's the wrong
24 delivery period. It's the wrong product.

25 THE COURT: Right. So, let's look at the wrong

1 product. So, the documents relating to the wrong product
2 could not possibly have been used to validate the right
3 product, right?

4 MR. MCATEE: Well, Your Honor, I need to go back
5 and look at the documents in the example. But the answer to
6 that is sometimes they are.

7 If you have a west power quote and that's the best
8 you could do on this day because it was very volatile and
9 you want to price an east power position, you might use the
10 west to price the east and then adjust it for some
11 correlation factor.

12 So, just because it's a different product doesn't
13 necessarily --

14 THE COURT: Okay.

15 MR. MCATEE: -- mean it's irrelevant.

16 MS. CAFFERATA: But that's not what their witness
17 testified to, Your Honor.

18 MR. MCATEE: That --

19 MS. CAFFERATA: So, that's completely speculative
20 coming --

21 MR. MCATEE: That --

22 MS. CAFFERATA: -- you know, I mean, that's --
23 that's a post hac explanation.

24 MR. MCATEE: That is what the witnesses testified
25 to, Your Honor.

1 MS. CAFFERATA: No. He's --

2 THE COURT: My question for you is how we're going
3 to get through this pile because this is -- this is
4 untenable.

5 (Pause)

6 THE COURT: I don't know what else to say other
7 than, Ms. Cafferata, you're going to have to make your
8 motion and that the -- there will be preclusion of testimony
9 to the extent that the witnesses cannot give specific
10 testimony that, in fact, with respect to the documents
11 they're being shown, that they relied upon them to conduct
12 the closeout.

13 Not broad market color that was generally
14 available. Not after the fact rationalizations.

15 I hear you on the point about using a different
16 position or product as a basis for a closeout. That's
17 something that I can understand that that would -- that that
18 might be the case.

19 I'm not saying that you won't disagree but I hear
20 you and I understand the point.

21 I don't know what else to do. I literally -- but
22 I don't -- do not understand. We're six weeks away. All
23 the witnesses that you've testified; have you been unable to
24 identify, through their testimony, the documents on which
25 they say they relied for closeout?

1 MS. CAFFERATA: You should address this.

2 MR. ROSSMAN: Yeah. Can I address that, Your
3 Honor?

4 THE COURT: Yeah.

5 MR. ROSSMAN: The Feinberg -- the example of
6 Mr. Feinberg who is their -- effectively their flow credit
7 head.

8 THE COURT: Yeah.

9 MR. ROSSMAN: Okay? Is -- illustrates the problem
10 of trying to achieve this in depositions which is even if
11 you zero in on one particular name; I had two days to take
12 Mr. Feinberg's deposition, okay?

13 We told them Goldman Sachs was going to be our
14 example that we're going to use. They knew that ahead time.
15 There were 531 documents in their spreadsheet that they
16 labelled with Bates numbers to say this is what they relied
17 on. And you're turning over a document, a document, a
18 document and the witness is disavowing, saying it has
19 nothing to do with Goldman Sachs. I didn't rely on it.
20 It's the wrong time period. This is currency trading.

21 So, we tried to zero in on what we thought perhaps
22 he relied on. So, we actually showed him his run. The
23 11:23, that was that example.

24 And, then, what we get is where it's favorable to
25 us, or unfavorable to them, then they realize that during

1 deposition and, then, walk away from it on cross-
2 examination.

3 So, what I don't want to do is I don't want to
4 show up at trial and I've got a moving target because even
5 that, it looks like I have larger sets of documents in my
6 office. I'm certain you in chambers, Your Honor. It's not
7 the size of the document. It the permutations that are
8 there which defeats the ability to know what the witness's
9 testimony's going to be.

10 So, for every given trade, there are 140 different
11 sources of information that are being cited in that pile as
12 things that the trader might say he's going to rely on and
13 we won't know that until the trader hits the stand. That's
14 a tough cross-examination.

15 I'll tell you, it's frustrated our ability to be
16 effective in the depositions because all we're effectively
17 getting from the trader witnesses is a disavowal of the
18 claim support spreadsheet. I didn't put that together.
19 Their consultants did.

20 And, then, when you ask them with specifics, you
21 couldn't have enough days of deposition testimony to
22 possibly get meaningful information because --

23 THE COURT: So --

24 MR. ROSSMAN: -- there's too many documents.

25 THE COURT: Okay. So, if we were to go to trial

1 tomorrow, and you're going to put on whoever you're going to
2 put on, traders, desk heads; you're going to have to --
3 there's going to be an exhibit binder, right? And you're
4 going to show them documents, right?

5 MR. MCATEE: Yes, Your Honor.

6 THE COURT: Okay. And, again, not saying that, at
7 this point in the run up, you have to have completed it.
8 But before the deposition, they need -- I've said it so many
9 -- I feel like I'm just a broken record.

10 They need to not have to go through that. They
11 need to have the specific documents on which the trader
12 relied.

13 I just -- when you're prepping the witness, aren't
14 you going through that with the person?

15 MR. MCATEE: Yes, Your Honor. And they had it.
16 It was in the spreadsheet. He had the -- however many
17 documents there were for each position. There are 1200
18 names.

19 THE COURT: But I --

20 MR. MCATEE: They had all the documents.

21 THE COURT: But what are we --

22 MR. MCATEE: They had them.

23 THE COURT: This is nonsensical. Mr. Rossman just
24 stood and gave chapter and verse about a witness disavowing
25 document after document after document.

1 So, what's happening here?

2 MR. MCATEE: I think in the deposition he talked
3 about an awful lot of them and there were a couple that
4 didn't match. I'm not -- I'm not credit. I'm the
5 commodities partner.

6 But my understanding of that deposition was he did
7 a good job with all the documents. There were a couple of
8 examples where they were pointing out these that they
9 perhaps shouldn't have been in there. But the vast majority
10 of them were spot on. That's what happened.

11 That doesn't mean we didn't do a good job with the
12 compilation. It's just means we might have missed a few.
13 But, overall, we did a very good putting this together and
14 giving them a road map to the various trades.

15 I was there for the commodities one. They put up
16 the trades, the back up. They went through all of them,
17 trade-by-trade. The witness talked about them.

18 They had the road map.

19 MR. ROSSMAN: I don't know what to say other than
20 that absolutely was not true with respect to the credit
21 trader that I spent two days taking. And the difficulty
22 that we have with it is we have two discovery tools we're
23 trying to use effectively to put us in a position to
24 understand what their case is going to be for this, you
25 know, claim larger than a billion dollars that they've put

1 to the estate.

2 And forget about the DQ and the proof of claim
3 which they should have done, you know, way back in 2009.
4 But, even in this discovery exercise, they understood. Your
5 Honor instructed them that they were supposed to identify
6 for us the specific supports that would go behind the claim
7 values that they associated with these trades.

8 Now, Goldman's a significant dispute of ours.
9 This is, you know, something that was identified to them in
10 advance. I try to use it as the one where we should be able
11 to identify each other. And I -- I welcome Your Honor to
12 read the two days' worth of transcript and I'm confident
13 that you'll come to the same conclusion that I came to which
14 is the exercise was completely frustrated. You could not
15 extract from the witness --

16 THE COURT: So --

17 MR. ROSSMAN: -- the documents the witness relied
18 on.

19 THE COURT: -- today -- so that deposition is
20 completed.

21 MR. ROSSMAN: The 30(b)(6).

22 THE COURT: The 30(b)(6).

23 MR. ROSSMAN: That's right. Uh-huh.

24 THE COURT: Okay. But is there going to be
25 another deposition of -- with respect to Goldman?

1 MR. ROSSMAN: There'll be a fact witness. There
2 will be 30(b)(1) of that individual and we'll try our best
3 to zero in on what we can get done.

4 But the whole idea of the 30(b)(6)s was that they
5 would have someone who was supposed to show up with the
6 institution's knowledge and identify for us the specific
7 support that they're -- that they relied on back in 2008 for
8 formulating this claim.

9 THE COURT: And you're saying that that was not
10 accomplished in that deposition.

11 MR. ROSSMAN: Absolutely not.

12 THE COURT: And you --

13 MR. ROSSMAN: Un-accomplishable, I would say.

14 THE COURT: -- disagree? You disagree?

15 MR. MCATEE: Absolutely, Your Honor. We -- the
16 30(b)(6) issue was teed up. We sent them the letter showing
17 how much we prepared our witnesses. I personally spent days
18 and days with the witnesses to get them ready.

19 I was there at many of the depositions. They took
20 that off the table. That's not in dispute.

21 We did a good job with 30(b)(6) witnesses.

22 THE COURT: Now, you're talking past each other.

23 My question --

24 MR. MCATEE: They took the --

25 THE COURT: My question for Mr. Rossman is having

1 spent two days with that individual; do you now know what
2 the reliance materials are?

3 MR. ROSSMAN: Absolutely not. I'm still left with
4 a complete guessing game.

5 It's a massive -- just so Your Honor understands,
6 what we were given is a massive spreadsheet with, in the
7 case of Goldman Sachs, 531 columns of Bates numbers. So,
8 just for that one name, you'd have to break out 531
9 documents and show them to the witness one at a time.

10 So, we tried -- we couldn't possibly mark 531
11 exhibits in a deposition and expect to get it done in two
12 days. So, we tried to identify some things that clearly
13 didn't seem to be relevant. Then, we tried to identify some
14 things which we thought were clearly relevant.

15 And when we thought we had something that we could
16 rely on, and started making conclusions from that, then
17 suddenly, at the end of the deposition, they disavowed it.

18 The point is I think it defies any -- and I'm not
19 saying that I would be the greatest deposition taker in the
20 world. But I've taken a few. And I would suggest, Your
21 Honor. it defies anyone's abilities to accomplish in a
22 30(b)96) deposition in two days or less to ferret out what
23 their claim reliance is.

24 THE COURT: But you see --

25 MR. ROSSMAN: When that should be on the document.

1 THE COURT: -- here's the part I don't -- here's
2 the part I don't understand. None of that should have been
3 necessary during the deposition.

4 They should have gone into the deposition with
5 just the documents that literally every one when they were
6 handed to the witness, the witness would have said; yes.
7 That was one of the documents we relied on for the closeout
8 and here's why.

9 So, to the extent that there's truth to what
10 Mr. Rossman is saying, and he has been known to tell the
11 truth, from time to time, and be accurate, then what
12 happened here? I mean --

13 MR. MCATEE: My understanding, Your Honor, of
14 credit is that there were a lot of quotes that came in that
15 morning, the 15th.

16 THE COURT: But you cannot --

17 MR. MCATEE: And we identified those and the
18 trader will say; I looked at those quotes and I used them
19 for my judgment and I marked my books fairly in order to,
20 you know, to find a middle point between what came in, what
21 was being, you know, being traded around the time I closed
22 out. Not just one quote because there were a lot of market
23 quotes that came in.

24 They took the totality of it and marked the books
25 fairly somewhere in the range that was coming in. That's

1 what the witness will say and we identified all of the
2 documents for every name that was traded in credit that the
3 traders used to mark the books.

4 THE COURT: But if he's saying that he showed this
5 witness document after document and the witness said; no, we
6 didn't rely on that. No, we didn't rely on --

7 MR. MCATEE: I think there were a couple in the
8 wrong place, Your Honor. But the vast majority were spot on
9 for that credit, for that morning and they had those and
10 they could have examined --

11 THE COURT: So, which is it? Is it --

12 MR. MCATEE: -- him on it.

13 THE COURT: -- what -- you're going to have to
14 give me the transcript. I mean, I can't -- I can't --

15 MR. ROSSMAN: I'd be glad to do that, Your Honor.

16 THE COURT: I can't cut through this.

17 MR. ROSSMAN: It's self-evident from the
18 transcript.

19 THE COURT: I can't cut through this. One of you
20 is not being accurate.

21 MR. ROSSMAN: And --

22 THE COURT: Either there were a few outliers that
23 he didn't rely on or there were virtually no inliers. I
24 mean, it's one or the other.

25 So, I'll read the transcript. It's less painful

1 than doing this.

2 MR. ROSSMAN: But, Your Honor, it's -- it's -- I'm
3 confident the transcript is going to validate me on this.
4 But putting aside the documents we particularly showed to
5 the witness, when you look at what the witness described as
6 the process that he went through, in terms of marking his
7 curves that day --

8 THE COURT: Yeah.

9 MR. ROSSMAN: -- there couldn't conceivably be 531
10 documents that he could rely on.

11 THE COURT: There -- that's my point. You cannot
12 -- you--

13 MR. ROSSMAN: Right.

14 THE COURT: You could not possibly look at that
15 many documents and mark them that day. That's just not how
16 it worked. It's just not how it worked.

17 MR. MCATEE: Your Honor, I -- I was not there at
18 that deposition.

19 THE COURT: Okay.

20 MR. MCATEE: It's about a different product area.
21 I'm doing --

22 THE COURT: It --

23 MR. MCATEE: -- my best to tell you what I think
24 happened --

25 THE COURT: I hear you.

1 MR. MCATEE: -- which is we prepared a
2 compilation. We gave them all the quotes for those
3 particular names and it was marked somewhere in the range
4 that came in that morning.

5 THE COURT: But it -- as a practical matter, okay,
6 it was chaos, right? And everybody was trying to mark these
7 positions in a very narrow window of time. There is no way
8 for a particular position that somebody looked at 500
9 documents. It's just -- it just didn't happen. It just did
10 not happen. So --

11 MS. CAFFERATA: Your Honor, they already admitted
12 that they included a bunch of things that they couldn't have
13 -- have just relied on. In their opening letter, and this
14 is on slide sixteen, they say all information that PG&E
15 traders reviewed and relied upon. They didn't say actually
16 relied upon or relied upon.

17 THE COURT: I get it.

18 MS. CAFFERATA: They said reviewed and. So,
19 they've already admitted this.

20 THE COURT: I get it. But here -- but the point
21 is now we're barreling towards the conclusion of these
22 depositions and I've made it clear that it's going to be
23 problematic if a witness gets on the witness stand and you
24 can demonstrate that in the deposition the witness had no
25 recollection or could not identify the documents that they

1 relied on; the testimony's going to be precluded or it's
2 going to be afforded the weight it deserves which is not
3 much.

4 It's not going to be the case that you can prepare
5 a witness for trial by showing him or her a bunch of
6 documents that he can assume or would conclude would have
7 been relied on to close out a position of this type.

8 That's just not -- that's not going to be
9 something that carries the burden of proof for the prong
10 that has to do with, you know, what the process was and that
11 the process was reasonable.

12 So, beyond that, I don't -- I literally do not
13 know what to do today other than to have you for the
14 depositions yet to be completed to, once again, do what I
15 thought I had told you to do several months ago, which is to
16 identify to them specifically the universe of documents on
17 which the traders relied to effect the closeout in real
18 time.

19 I don't know how I can say it more clearly than
20 that. And that, to the extent that that is not done and
21 they're prejudiced, then I'll listen to a motion in limine,
22 motion to preclude, you know, before trial, or during trial.
23 That's the best I can do. I don't know what else to do.

24 If you want me to attend the deposition, I'll come
25 and be a fly on the wall. If you want me to read a

1 transcript, I'll read a transcript. I'll do whatever I can
2 to help you. But I don't know what more I can say.

3 MR. MCATEE: Understood, Your Honor. And I think
4 we have done that and, in addition, there was an extra layer
5 of sending documents identified in advance that we're using
6 to prepare the witness and then we had a meet and confer and
7 then counsel for Lehman sent us a list of documents. And we
8 got the witnesses ready on those documents.

9 So, there has been a process in place to make sure
10 the depositions run smoothly.

11 MS. CAFFERATA: Your Honor, we're most of the way
12 through the 30(b)(6) depositions. We have our record. We'd
13 like the opportunity to brief it and --

14 THE COURT: Sure.

15 MS. CAFFERATA: -- show the Court what we think
16 how we should proceed.

17 THE COURT: That's fine. Yeah. That's fine.
18 That's fine.

19 Okay. So, there is nothing more for me to do
20 today.

21 But you mentioned, and I think I react every time
22 you mention it, dispositive motions. What do you have in
23 mind? Is that something that we -- it may not be ripe for
24 discussion yet. But I'm going to want --

25 MR. MCATEE: The one I have in mind, Your Honor,

1 is the as of issue, the closing out on the 16th as of the
2 15th. That issue may be candidate. That's one potential.
3 There may be others. But that's one that I had in mind.

4 THE COURT: Okay.

5 MR. ROSSMAN: I think our expectation is there
6 aren't going to be dispositive motions. That's not to say
7 that we're not going to continue to study it and think about
8 it.

9 THE COURT: Yes.

10 MR. ROSSMAN: But that's my initial reaction.

11 THE COURT: Okay. All right. That's better.

12 All right. Well, then, why don't we call it a day
13 and, then, at some point, later in the spring, when it's not
14 about to snow, we should sit down and just really kind of
15 figure out what you think the trial is going to look like in
16 terms of the length, you know, what you have in mind. Time
17 limitations. No time limitations.

18 I would love there to be time limitations. I
19 don't think it's practical.

20 But we're just going to have to figure it out
21 because it's in -- it's a long, long period of time. So --

22 That being said, are there any business to
23 business discussions going on? Not so much, huh?

24 MR. MCATEE: I'm not privy to them, Your Honor.
25 There could be. I just am not privy.

1 THE COURT: I'm getting a little nod back there.

2 MR. ROSSMAN: I think people are sensitive to the
3 fact that we're on the record.

4 THE COURT: Got it. Okay. Thank you for coming
5 in. Stay safe in the snow.

6 MR. MCATEE: Thank you, Your Honor.

7 MS. CAFFERATA: Thank you.

8 (Whereupon, these proceedings were concluded at 2:33
9 p.m.)

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C E R T I F I C A T I O N

I, Pamela A. Skaw, certifies that the foregoing transcript
is a true and accurate record of the proceedings.

Pamela Skaw

Digitally signed by Pamela Skaw
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[& - approximately]

Page 1

&	2009 15:20 51:3	6th 4:16,22 5:1	adjustments
& 3:10	2018 1:19 62:11	7	28:11
0	21st 4:19	7th 4:16,25	admission 42:6
08-13555 1:6	22 21:12 62:11	8	admits 33:18
1	221 20:11	825 3:12	admitted 26:15
1 52:2	22nd 3:4	9	57:11,19
1,200 40:16	23rd 4:23	9-15 21:12	adv 1:11
1,240 18:23	25 21:11	96 38:2 53:22	advance 35:25
10 5:6 18:4	26 11:14	98 21:9,9	51:10 59:5
10004-1408 1:17	27 5:3	a	adversary 2:1
10010 3:5	2nd 4:20	a.m. 33:25	afforded 58:2
10019-7475 3:13	3	abilities 53:21	ag 1:12 2:2 3:11
102 21:24	3 5:6	ability 48:8,15	ago 58:15
108 21:5	30 8:12 9:3 16:21	able 28:6 30:24	agree 10:9 11:24
10th 10:11 11:12	32:20 34:14 36:18	32:14 34:16 38:3	13:18 15:21 40:25
11 33:25	37:17 38:2 41:8	40:6 51:10	agreed 7:2 12:4
1123x 33:18	41:15 42:10 43:3	absolute 15:20	44:14
11501 62:20	43:9,21 51:21,22	absolutely 15:3	agrees 33:6
11:23 47:23	52:2,4,16,21	16:22 50:20 52:11	ahead 12:9 14:24
1200 49:17	53:22 59:12	52:15 53:3	30:13 47:14
122 42:7	300 62:19	accomplish 53:21	al 1:10,12 2:2,2
13-01676 1:11 2:1	30th 5:2	accomplishable	allen 19:20 22:23
140 20:14,25 21:1	330 62:18	52:13	22:25 24:12
48:10	4	accomplished	allen's 24:9
15 4:21 21:10,16	40 24:14	52:10	amount 5:16
21:19	4th 4:19	accounts 16:21	20:21
150 20:12	5	accurate 54:11	andrew 3:8
155 20:24	5 16:1	55:20 62:4	andy 6:13
15th 12:1,2 29:13	500 57:8	achieve 47:10	answer 27:5,9
41:13,20 44:11,12	51 3:4	actual 5:12 13:6	32:12 34:1,2
54:15 60:2	531 32:18,25	15:10	35:24 36:1,1
16 21:11,12	47:15 53:7,8,10	added 16:24	37:23 42:11 45:5
16th 10:21 11:25	56:9	41:14,21	answering 32:22
44:10 60:1	6	adding 43:12	answers 9:12
17 4:25	6 8:12 9:3 21:12	addition 59:4	anyone's 53:21
1:29 1:20	32:20 36:18 37:17	additional 17:7	approach 12:17
2	51:21,22 52:4,16	address 6:13	appropriate
2 31:10	52:21 59:12	35:15 37:9 47:1,2	12:21 35:15
20 1:19 5:4 33:9	60 41:4	adequate 35:11	appropriately
200 10:3	600 18:24 40:16	adjust 43:13	5:15
2008 41:10 52:7	608 21:24 42:7	45:10	approve 34:25
			approximately
			22:18

[april - claim]

Page 2

april 4:16	back 7:12,25 13:2 17:5 26:7,9,22 29:10 35:6 41:9 41:12 43:24 44:19 45:4 50:16 51:3 52:7 61:1	blueprint 40:9,10	31:18,22,25 32:5
archive 41:18		board 13:1,4,21	32:9 36:13,16
area 35:22 56:20		book 42:21	38:2 39:7,11,18
areas 41:2		books 19:7 54:19 54:24 55:3	42:6,19 44:3,19
argue 27:23		bowling 1:16	45:16,19,22 46:1
argued 18:7,9 26:10,14	backup 14:8 15:15 19:11 23:21 37:24	boxes 22:9	46:7 47:1 57:11 57:18 59:11,15 61:7
arguments 13:5 30:25		break 10:11 53:8	cafferata's 29:12
aside 56:4	backward 17:14	brief 35:14 39:8 42:3 59:13	calculating 29:16
asked 11:7 13:25 14:16 16:22 20:3 23:23 24:11 26:3 26:5,13 31:1 33:16,23 36:18,23 37:14 39:15 40:20	ballpark 19:2	briefs 5:5	california 21:5
asking 14:6 27:13 35:8 38:21	bankruptcy 1:1 1:15,25 15:15	broad 46:13	call 60:12
associated 51:7	barrelling 57:21	broaden 25:6 29:11 30:5,6	candidate 60:2
assume 58:6	based 9:4 19:19	broken 10:18 49:9	carrerata 4:18
asterisks 28:19,20	basic 43:15	broker 10:3 25:10	carries 58:9
attend 58:24	basically 8:19 15:1	brokers 22:16	carry 12:23
attention 33:24	basis 11:11 35:12 35:12 46:16	brothers 1:6,9 2:1	case 1:6 8:1 35:5 40:5 43:6 46:18 50:24 53:7 58:4
attorney 3:11	batch 20:5	bullet 22:7	cases 38:10
attorneys 3:3	bates 11:11 21:23 24:25 30:6 40:19 47:16 53:7	bunch 22:17 26:15 30:21 39:24 44:5 57:12 58:5	certain 48:6
attributes 24:18 24:22 28:22	benefit 8:17	burden 13:10 26:24 27:19 32:13 35:9 58:9	certifies 62:3
auction 29:18	best 15:12 16:11 19:4 27:3 30:18 43:25 45:7 52:2 56:23 58:23	burdens 35:3	cetera 9:1
august 4:22 5:1,3 5:4	better 10:6 60:11	business 39:3 42:13 60:22,23	chaff 22:17
available 46:14	beyond 58:12	buy 33:16	chain 43:8
avenue 3:4,12	bid 23:22 25:9,12 29:18	c	chambers 48:6
average 20:13,25	bigger 28:4 31:3 41:24 43:11	c 1:24 3:1 4:1 62:1 62:1	chance 6:17
avoid 7:17,17 9:13,20 40:2	billion 35:8 50:25	cafferata 3:7 4:6 4:11,14 5:18,23 6:7,11 7:25 12:9 12:10,14,17 14:5 14:25 15:7,25 16:3,8 17:19,23 17:25 18:3,13,15 19:8,11,14 20:16 20:19 25:24 26:4 26:6,9 27:1,3 28:2 29:25 30:11,14	change 34:2 37:6
aware 20:8	binder 49:3		changes 34:1
awful 50:3	bit 34:21		chaos 57:6
b	block 5:16		chapman 1:24
b 1:23 8:12 9:3 32:20 36:18 37:17 38:2 51:21,22 52:2,4,16,21 53:22 59:12	bloomberg 12:20 17:12		chapter 49:24
	bloombergs 29:17		characterize 11:18
			charge 14:9
			cherrypicked 22:2,3
			circle 21:8
			circles 29:24
			cite 24:25
			cited 48:11
			claim 11:2 15:4 17:14 20:13 21:6

[claim - court]

Page 3

31:5,9 43:9 48:18 50:25 51:2,6 52:8 53:23 clear 23:17 57:22 clearly 31:12 33:5 39:13 53:12,14 58:19 close 58:7 closed 22:23 23:13 25:4,7 40:12,18 54:21 closeout 7:8 11:20 12:22 13:11 14:10 16:23 17:2,4,9 22:12 23:6 28:10 29:16,20 30:4 33:8,25 34:4 36:17 39:23 43:14 43:15 46:12,16,25 54:7 58:17 closeouts 10:21 closing 24:10,15 25:23 60:1 collate 14:21 collected 13:25 collecting 14:9 color 17:12 46:13 column 20:20 columns 53:7 comb 13:2 41:7 combed 34:14 combined 38:10 combing 42:10 43:3 come 9:23 19:4 27:18 35:9 37:12 41:16 51:13 58:24 comes 38:24 39:4 coming 30:22 45:20 54:25 61:4 commodities 5:25 6:5,5,7,15 9:6,18 13:24 18:20 31:17	35:23 36:16 37:3 37:13 50:5,15 communication 28:9 communications 29:19 compilation 5:25 6:5,5,8 7:3 11:17 13:15 18:2,20 23:15,21 29:10 31:17 32:6 36:3,6 38:18,19,25 39:12 50:12 57:2 compilations 6:6 6:9 8:8,17 10:10 19:24 compile 16:12 compiling 10:20 complain 11:17 complete 26:13 30:19 39:6 53:4 completed 49:7 51:20 58:14 completely 6:12 13:18 35:21 36:17 42:3 45:19 51:14 completion 4:10 4:15,24 6:22 complex 12:10 35:5 complicated 25:16 28:24 comprehensive 26:13 31:1 conceivably 56:9 conclude 58:6 concluded 61:8 conclusion 9:23 51:13 57:21 conclusions 53:16 conduct 17:3 46:11	confer 59:6 conference 2:2 4:2 7:2 38:8 conferred 6:16 confers 7:13 28:16 confidence 36:23 confident 51:12 56:3 confront 8:2 confronted 40:1 confronting 39:21 confuse 37:25 confused 7:15 confusion 23:18 conjunction 6:22 connection 16:18 23:14 consequences 35:10 consultant 19:18 36:25 consultants 34:13 48:19 consulted 23:14 contested 5:9 continue 19:8 38:12 60:7 continuing 25:5 38:7 contrary 9:9 15:10 conversations 19:20 coo 14:15 37:16 corner 5:11 33:14 cornerstone 19:17 36:4,24 correct 10:6 17:19 23:4 27:25 28:2 correlation 45:11 counsel 10:12 14:16 21:20 34:12	36:24 39:5 44:14 59:7 counsel's 15:11 counterparties 11:3 country 62:18 couple 24:6 50:3,7 55:7 course 41:19 court 1:1,15 4:2,8 4:12,17 5:8,19 6:4 6:9,21 7:23 8:15 8:21,24 10:13,15 10:17 11:13,16 12:9,13,15,19 13:15,19,22 14:4 14:12,14,19,24 15:6,24 16:2,4,15 16:25 17:18,20 18:12,14,16,22 19:10,13 20:15,17 22:8,22,25 23:3,5 23:9,12,16,19 24:12,20,22 25:2 25:5,20 26:8,25 27:2,5,9,19,22 28:14,23 29:23 30:1,13 31:14,21 31:24 32:1,6 36:8 36:10,12,15 37:8 37:11 38:1,5,23 39:10,17,20 40:15 40:22,24 41:3,6 41:15 42:17,20,25 43:2,23 44:1,3,25 45:14 46:2,6 47:4 47:8 48:23,25 49:6,19,21,23 51:16,19,22,24 52:9,12,14,22,25 53:24 54:1,16 55:4,11,13,16,19 55:22 56:8,11,14
---	--	---	--

56:19,22,25 57:5 57:17,20 59:14,15 59:17 60:4,9,11 61:1,4 courtroom 8:4 covered 15:1 cravath 3:10 19:17 36:4 created 25:4 35:7 39:1,5 credible 43:16 credit 1:12 2:2 3:11 7:1,3,7 8:7 9:16 15:3,7 19:21 20:4,8 23:2 24:18 24:23 29:19 31:6 31:16 34:24 35:3 35:21 36:3 37:4 38:17 47:6 50:4 50:20 54:14 55:2 55:9 cross 33:23 48:1 48:14 cs 27:14 36:5 cure 21:21 currency 33:7 47:20 current 19:21 curves 56:7 custodians 43:4 cut 55:16,19	database 24:25 databases 16:20 20:1 41:18 date 11:20 43:17 62:11 dates 5:7 12:21 dating 13:12 day 8:11 12:23 13:7,17 14:2,15 35:6 45:8 56:7,15 60:12 days 11:14 29:13 29:13 47:11 48:21 50:21 51:12 52:17 52:18 53:1,12,22 deal 35:10,18 dealer 24:21 dealers 22:15 dealing 35:17 37:3 debtor 1:7 3:3 decent 14:23 default 15:13 defeats 48:8 defects 21:14,19 defendant's 4:18 defies 53:18,21 definition 34:21 44:9 deliberately 37:25 delicate 39:9 delivered 42:16 deliveries 43:7 delivery 21:13 44:24 demonstrate 7:9 57:24 demonstrated 44:4 depends 7:13 44:8 44:9 depose 40:19	deposed 14:16 deposing 27:12 deposition 5:24 9:10,16,25 15:10 28:7 29:1 32:7,23 40:4,6 47:12 48:1 48:21 49:8 50:2,6 51:19,25 52:10 53:11,17,19,22 54:3,4 56:18 57:24 58:24 depositions 4:15 4:24 6:23 7:1,16 8:10,14,18 9:3 21:3 27:13 32:2 42:5 47:10 48:16 52:19 57:22 58:14 59:10,12 derivative 38:10 describe 5:20,21 described 30:9 56:5 deserves 58:2 desk 7:6 39:2 43:7 49:2 detail 6:17 diagram 21:7 diane 3:7 different 17:18 28:18 30:22,23 33:12 34:21 35:22 39:20 45:12 46:15 48:10 56:20 difficulty 50:21 direction 28:2 directions 10:23 disagree 46:19 52:14,14 disavow 16:10 disavowal 48:17 disavowed 16:9 34:10 36:17 39:14 53:17	disavowing 47:18 49:24 disconnect 41:7 discovery 4:2,10 10:11 50:22 51:4 discreet 43:7 discussion 6:2 59:24 discussions 60:23 dispositive 5:1,5 59:22 60:6 dispute 6:20 51:8 52:20 dissatisfied 6:19 distill 19:25 distinguish 25:6 distinguished 7:8 district 1:2 document 32:4 33:3,20 34:7,10 36:19 37:18 47:17 47:17,18 48:7 49:25,25,25 53:25 55:5,5 documentation 15:4,8 29:15 42:13,14 documenting 14:10 documents 9:7,8 9:10 11:19 14:7 18:8,10,18,24 19:16,18 20:1,2,5 20:10,12,13,22,24 21:1,5,23,24 22:9 22:19 24:2,14,16 25:18 26:21 31:13 32:18 33:1,9,17 33:21 34:14,17 36:6,21 39:13,24 40:3,7,12,16,21 41:4,8,15,23 42:7 42:10 43:3,7,10
d			
d 4:1 darin 3:15 dark 42:2 dart 13:1,1,4,4 darts 13:21 data 15:14 16:7 17:7,8 21:12 24:3 25:22 28:4 29:15 29:17,18 30:6 43:11 44:23			

44:4,10,23 45:1,5 46:10,24 47:15 48:5,24 49:4,11 49:17,20 50:7 51:17 53:9 54:5,7 55:2 56:4,10,15 57:9,25 58:6,16 59:5,7,8 doing 8:11,12 9:24 29:22 56:1 56:21 dollars 35:8 50:25 dq 11:1 51:2 draw 33:24 dump 34:15 duplicates 21:8 22:16 24:3,7	embrace 33:20 emissions 23:2,8 23:10 emphasized 19:23 21:20 employee 19:22 employees 36:5 ended 41:22 engaged 17:8 enormous 20:1 entirely 26:1 entitled 17:21,21 esq 3:7,8,15 estate 51:1 et 1:10,12 2:2,2 9:1 evaluated 25:11 everybody 17:11 42:22 57:6 evidence 14:7 38:18,20,24 evident 55:17 examination 33:23 34:9 48:2 48:14 examine 9:15 examined 55:10 example 11:20,21 12:25 13:23 20:11 21:4 22:4,12,22 26:17 27:3 31:6 32:21,23,25 33:4 33:12 37:4,9,13 45:5 47:5,14,23 examples 33:10 35:20 36:2 50:8 exception 21:10 excuse 4:6 exercise 26:1 51:4 51:14 exhibit 49:3 exhibits 53:11	exist 42:8 existence 12:20 exists 10:22 expect 30:20,20 30:24 53:11 expectation 60:5 expected 30:23 experience 9:9 expert 4:18,20,22 4:24 explain 6:21 31:19 32:14 39:11 explained 35:2 explaining 19:15 explanation 34:19 34:20 45:23 explicitly 37:2 extend 4:16 extent 8:11 46:9 54:9 58:20 extra 59:4 extract 51:15 extracts 22:13 23:24 extreme 13:23 eyes 20:6 31:12	feinberg 31:6 33:6 34:9 37:5 47:5,6 feinberg's 47:12 ferret 53:22 fifteen 33:13 figure 21:2 28:4 30:7 34:16 60:15 60:20 file 38:16 files 41:12 filtered 21:22 filtering 21:21 find 8:9 9:22,22 13:3 17:11 54:20 fine 22:4 32:24 59:17,17,18 first 8:12 10:11 15:1 20:23 22:15 29:2 30:17 five 7:17 29:6 40:12 flaws 21:10 floor 3:4 flow 47:6 fly 58:25 foiled 8:16 follow 34:9 following 15:13 foregoing 62:3 forget 51:2 form 38:25 formerly 27:14 formulating 52:8 forth 7:12 forward 8:10 found 16:23 41:12 41:20 43:22 four 8:11 15:9 19:24 21:22 29:6 29:13 fourteen 33:11,11 fred 22:23,25
e			
e 1:23,23 3:1,1 4:1 4:1 62:1 earlier 44:7 east 45:9,10 education 31:15 effect 58:17 effective 48:16 effectively 47:6 48:16 50:23 effort 14:23 16:12 19:4 41:10 eight 21:4 44:20 eighteen 38:15 eighth 3:12 either 7:5 9:10 25:12 55:22 eleven 22:21 36:14 eliminated 39:15 email 16:21 37:1 42:21 emails 10:3,23 24:4 29:18 41:18 emanuel 3:2			
		f	
		f 1:23 62:1 fact 4:15 6:23,25 7:10 8:13,18 10:19 12:22 17:9 37:2 44:3 46:10 46:14 52:1 61:3 factor 45:11 failed 17:10 39:18 39:19,19 fairly 54:19,25 faith 13:9 favorable 47:24 feeds 29:17 feel 10:17,17 29:23 49:9	

[frivolous - information]

Page 6

frivolous 35:17	46:2,7 47:13,14	hear 13:12 29:1	hunt 28:4
front 31:8 33:9,13	48:9,12 49:1,1,2,3	40:22 46:15,19	hypothetical 9:9
frustrated 48:15	49:4,14 50:24	56:25	i
51:14	51:24 55:13 56:3	hearing 11:16	idea 11:6 20:9
full 5:14 35:1	57:22 58:1,2,4,8	35:2	52:4
further 31:14	59:24 60:6,7,15	help 6:2 7:20	identified 9:11
fx 41:1	60:20,23	10:10 36:6 59:2	10:4 12:4 19:18
g	goldman 32:19	helpful 19:12	20:10,12,14,22,24
g 4:1	47:13,19 51:25	helps 12:14	21:6,22 23:24
game 8:12,17	53:7	herring 18:15	26:21 29:7 31:8
28:25 42:1 53:4	goldman's 51:8	hi 4:4	32:19 33:1 44:4
gas 23:1,8 37:14	good 13:9 16:13	high 15:5	44:15 51:9 54:17
37:19	34:7 50:7,11,13	highlighted 15:16	55:1 59:5
gather 13:25	52:21	history 29:10	identify 11:10
generally 8:1	grade 31:15	hit 13:4 25:12,24	37:7 46:24 51:5
46:13	great 8:22	hits 48:13	51:11 52:6 53:12
generous 21:15,19	greatest 53:19	holdings 1:6,9 2:2	53:13 57:25 58:16
getting 5:12 16:25	green 1:16	hon 1:24	illustrates 47:9
48:17 61:1	gs 34:15	honor 4:6,7,11	illustrative 13:23
gigantic 19:2	gslecx 31:10	5:18 6:15 7:22,24	impossible 38:6
give 24:25 27:6	guess 5:20 23:16	8:2 10:8 11:24	include 29:15
30:2,3 39:22 46:9	guessing 28:25	12:10,17 13:18	41:11
55:14	53:4	14:25 15:22 16:10	included 11:17
given 9:15 35:7	guidance 19:19	17:19 18:6,7,19	19:18 24:1 26:15
48:10 53:6	h	19:8 22:24 23:7	33:19 34:25 36:21
gives 9:7 36:23	hac 45:23	24:16 25:24 27:4	44:13 57:12
giving 50:14	handed 54:6	27:12 28:13 29:25	includes 21:17
glad 44:6 55:15	handful 18:9,17	30:11 31:16 33:13	including 29:16
go 6:17 8:10 12:9	34:17	35:14,20 36:13	38:16
13:2 14:24 15:25	handy 4:14	38:22 39:7 42:5,6	inclusiveness
19:10 26:7,9,22	happen 9:2 57:9	43:20 44:7,19	30:15 31:4
28:7,8 29:1 30:13	57:10	45:4,17,25 47:3	indicative 6:6
32:7 45:4 48:25	happened 16:18	48:6 49:5,15 51:5	indiscernible 4:14
49:10 51:6	30:10 36:11 50:10	51:11 52:15 53:5	12:7 28:14 33:2
goes 15:2 29:10	54:12 56:24	53:21 54:13 55:8	individual 52:2
going 4:3,3 5:13	happening 7:11	55:15 56:2,17	53:1
5:14 6:25 7:19,24	50:1	57:11 59:3,11,25	individuals 27:17
9:8,21,22 10:1,1,6	happy 26:6	60:24 61:6	indoor 23:24
13:6 19:13 30:5	he'll 25:23	hoping 33:15	24:25
31:20 32:2,10,11	head 25:25 47:7	hub 21:5	inform 14:1
32:14,22 37:6	headline 21:1	huge 21:19	information 19:6
38:19 39:22,24,24	heads 43:7 49:2	huh 15:6 23:9,19	20:1 23:22 24:8
40:1,4,9 43:13,16		36:15 51:23 60:23	25:17 29:7 38:18

39:12 48:11,22 57:14 informed 24:9 25:22 initial 60:10 inliers 55:23 instance 29:4 institution's 52:6 instructed 15:4 51:5 instructive 31:23 inter 37:20 interested 10:1 28:19,20,23 introduce 7:9 involved 20:4 43:7 irrelevant 45:15 issue 4:9 5:24,24 6:13 8:2 9:1 12:11 12:23 28:13 30:16 35:18 39:5,6 40:2 44:16,18 52:16 60:1,2 issues 5:24 35:14 35:15 44:22 items 22:10 31:8	justifying 43:12 k keep 7:19 10:6 14:6 19:13 kind 14:21 24:2 32:11,20 60:14 knew 20:6 47:14 know 4:12 7:20 8:7 9:2,5,12,24 10:3 13:1,2,3,8,17 17:22 21:16 25:8 25:12 26:19 28:8 29:7 31:10,11 33:16 34:13,15,22 34:24 35:4 36:1 37:2 38:9 39:3 40:17,19,23 43:12 43:13 45:22 46:6 46:21 48:8,13 50:19,25 51:3,9 53:1 54:20,21 58:10,13,19,22,23 59:2 60:16 knowing 28:23 35:1 40:3 knowledge 52:6 known 54:10	legal 62:17 lehman 1:6,9 2:1 5:21 7:8 8:23 9:23 10:12,22,25 11:1 11:17 14:16,23 15:15,18 24:14 27:12 33:17 35:4 59:7 lehman's 38:15 length 60:16 letter 19:3 21:21 22:7 29:12,21 42:7 44:14 52:16 57:13 letters 5:22 7:12 level 15:5 lifted 25:12 limine 58:21 limitations 60:17 60:17,18 line 20:23 22:15 linkage 13:13,20 liquidity 28:11 43:12 list 24:1 25:18 59:7 listed 24:5 40:18 listen 58:21 literally 28:6 32:7 46:21 54:5 58:12 litigation 16:19 little 21:8 25:16 34:20 41:24 61:1 llp 3:10 log 39:3 long 8:3 11:8,9 60:21,21 look 13:3 21:18 22:10 27:25 30:18 31:10 32:21 33:22 36:8,13 38:5 43:17 44:19,25 45:5 56:5,14	60:15 looked 16:23 22:5 22:6,11,14 33:22 37:13 54:18 57:8 looking 17:14 18:10 25:11 looks 33:6 48:5 lost 20:15 lot 5:11 11:2 18:16,17 19:6 25:9,9 35:16 50:3 54:14,22 love 60:18 m madison 3:4 main 30:15 major 21:10 majority 50:9 55:8 making 4:4 10:5,8 42:15 53:16 map 50:14,18 march 1:19 5:10 62:11 mark 14:1 19:7 53:10 55:3 56:15 57:6 marked 54:19,24 57:3 market 17:12 29:17 46:13 54:22 markets 37:20 marking 56:6 massive 53:5,6 match 50:4 material 19:11 materials 7:4 25:6 28:3,5 29:11 32:3 53:2 matt 4:4 matter 1:5 57:5 matters 5:21
j january 7:2 10:11 10:18 11:12 18:4 26:7 japed 8:7 job 50:7,11 52:21 joe 9:5,17 judge 1:25 judgement 24:10 judgment 14:1 19:7 25:23 54:19 july 4:20,23 5:2 jumped 37:4 june 4:21 junior 14:21	l labelled 47:16 laid 31:12 language 15:16 larger 11:3 48:5 50:25 late 8:9 lay 20:6 layer 59:4 learned 37:19 leave 35:14 38:16 leaves 21:9 led 43:9 left 5:21,24 20:10 22:8 23:2,3 26:18 26:20 53:3		

mcatee 3:15 7:23 10:8,14,16 11:9 11:14,24 13:14,18 13:20,24 14:11,13 14:15,20 16:10,20 17:17,24 18:1,19 18:23 19:15 22:24 23:1,4,7,10,13,17 23:20 24:16,21,24 25:3,15,21 26:3,5 26:14 27:8,11,21 27:25 28:13,15 29:4 31:16 35:20 36:9,11 37:9,12 38:21 40:14,16,23 41:1,4,9,17 42:24 43:1,19,24 44:2,6 45:4,15,18,21,24 49:5,15,20,22 50:2 52:15,24 54:13,17 55:7,12 56:17,20,23 57:1 59:3,25 60:24 61:6 mean 9:22 17:20 18:16 22:17,22 24:20 27:19,23,25 28:25 38:23,24 40:15 45:15,22 50:11 54:12 55:14 55:24 meaning 7:13 8:7 meaningful 48:22 means 50:12 mechanics 19:22 meet 7:12 8:20 28:16 59:6 mention 28:15 59:22 mentioned 44:7,7 59:21 mentioning 28:12	mere 12:19 messages 12:20 17:13 met 6:16 metrics 23:23 mid 23:21 24:24 25:1 middle 29:14 54:20 mids 25:25 million 16:21 19:25 34:14 41:8 41:15 42:10 43:3 43:9,21 mind 13:5 59:23 59:25 60:3,16 minded 25:8 mineola 62:20 missed 44:2 50:12 mix 7:6 monetary 35:16 money 35:16 months 14:20 58:15 moore 3:10 morning 54:15 55:9 57:4 motion 38:16 46:8 58:21,22 motions 5:1,5 59:22 60:6 moved 11:4 moving 48:4 muddying 31:2 multiple 36:4	necessarily 45:13 necessary 54:3 need 5:13,14,17 9:20,20 32:11,16 45:4 49:8,10,11 needed 9:17 28:1 needs 32:11 35:3 neglected 9:17 never 10:4 19:21 31:12 37:6 new 1:2,17,17 3:5 3:13 27:17 nine 22:1 29:13 nod 61:1 non 39:5,6 nonsensical 49:23 notion 10:25 number 11:11 16:1 20:13,21 21:17 25:1 40:19 44:20 numbers 21:23 25:19 30:6 34:5,6 44:12,18 47:16 53:7 ny 3:5,13 62:20	23:5 25:20 27:2 29:4,23 30:5 34:16 38:1,23 40:22 45:14 47:9 47:12 48:25 49:6 51:24 56:19 57:5 59:19 60:4,11 61:4 old 62:18 once 8:20 58:14 ones 11:24 35:8,9 39:14 44:15 open 11:6 opening 57:13 opportunity 9:15 39:8 59:13 opposition 5:3 option 23:10 25:17 order 19:24 44:11 54:19 ordered 18:3 organized 39:3 outliers 55:22 outside 8:4 overall 50:13 overlap 21:13
		o	p
	n	o 1:23 4:1 62:1 object 15:19 obligated 30:2,2 obtained 15:15,18 october's 5:10 offer 23:22 25:9 25:13 29:18 offered 28:17,22 offering 38:17 office 48:6 oh 9:7 13:3 okay 4:8,12,17 5:8 5:19 8:24 10:7 11:13 13:19 14:14 14:19,24 15:24 16:15,25 19:10	p 3:1,1 4:1 p.m. 61:9 package 28:18 packet 28:7 page 15:2,9 19:14 20:16 21:4 31:7 32:17 33:13 36:13 38:14 39:21 pages 16:21 19:25 painful 55:25 pamela 2:25 62:3 62:7 part 6:23 27:16 39:23 42:17,18,20 54:1,2
	n 3:1 4:1 62:1 name 47:11 53:8 55:2 names 49:18 57:3 narrow 57:7 nassab 33:23		

<p>particular 23:25 26:17 31:9 33:1 39:23 40:3 47:11 57:3,8</p> <p>particularly 56:4</p> <p>partner 34:25 50:5</p> <p>party 29:18</p> <p>patel 14:16 16:12 19:20 20:3 37:16</p> <p>patel's 15:10</p> <p>path 10:7</p> <p>pause 12:16,18 35:19 46:5</p> <p>paying 8:8</p> <p>people 15:7 16:19 17:13 42:14 61:2</p> <p>perfect 10:9</p> <p>period 8:6 21:13 28:24 29:14 44:24 47:20 60:21</p> <p>permutations 48:7</p> <p>persevering 8:5</p> <p>person 14:8,21 40:5 49:14</p> <p>personally 52:17</p> <p>persons 14:8 17:8</p> <p>pertaining 32:25</p> <p>pertinent 33:5</p> <p>pg&e 19:19 57:14</p> <p>ph 15:9 31:7 33:23</p> <p>phone 4:3</p> <p>pie 31:15</p> <p>pile 19:16 20:2,5 31:12 40:17,24 41:22 42:19 46:3 48:11</p> <p>piles 39:13,13 41:1</p> <p>place 10:21 14:22 15:14,18 16:6</p>	<p>24:8 55:8 59:9</p> <p>plan 8:12,17</p> <p>planning 5:11,15</p> <p>plausibly 21:16 22:19</p> <p>please 10:5</p> <p>plowing 6:18</p> <p>plucked 37:24</p> <p>plugged 4:4</p> <p>pm 1:20</p> <p>point 6:1 12:11 14:5 15:2 23:16 23:18 30:15,17 31:3,7 35:3 38:15 46:15,20 49:7 53:18 54:20 56:11 57:20 60:13</p> <p>pointed 36:2</p> <p>pointing 50:8</p> <p>points 22:7 30:12</p> <p>portrayed 19:3</p> <p>position 9:21 22:23 33:18 45:9 46:16 49:17 50:23 57:8 58:7</p> <p>positions 14:2 40:18 57:7</p> <p>possible 34:22</p> <p>possibly 8:6 44:5 45:2 48:22 53:10 56:14</p> <p>post 11:20 13:12 45:23</p> <p>postdate 24:17</p> <p>postdated 21:12 42:8</p> <p>postdating 21:20 21:24</p> <p>potential 60:2</p> <p>potentially 33:18 34:10</p> <p>power 6:1 12:11 14:5 23:1,8 31:7</p>	<p>37:14,20 38:15 45:7,9</p> <p>practical 57:5 60:19</p> <p>precise 17:1</p> <p>preclude 58:22</p> <p>precluded 9:14 38:17 40:9 58:1</p> <p>preclusion 9:1 35:18 46:8</p> <p>preclusive 32:11</p> <p>prejudging 9:22</p> <p>prejudice 8:22 42:5</p> <p>prejudiced 58:21</p> <p>premium 43:12</p> <p>preparation 20:4 32:21</p> <p>prepare 5:16 36:6 58:4 59:6</p> <p>prepared 6:1 8:1 14:18 15:20 36:4 36:24 38:3 52:17 57:1</p> <p>preparing 19:15 19:22 21:2 23:14</p> <p>prepping 49:13</p> <p>preserved 15:3</p> <p>pretty 6:19</p> <p>price 13:1 21:12 24:3 43:13 44:23 45:9,10</p> <p>prices 12:2 33:15 44:11</p> <p>pricing 33:17 36:22</p> <p>print 19:1</p> <p>privy 60:24,25</p> <p>probably 8:1</p> <p>problem 21:24 26:23 30:10 31:4 47:9</p>	<p>problematic 57:23</p> <p>problems 44:20 44:21</p> <p>proceed 59:16</p> <p>proceeding 2:1</p> <p>proceedings 61:8 62:4</p> <p>process 12:24 13:8 56:6 58:10 58:11 59:9</p> <p>produce 19:24</p> <p>produced 11:7,9 16:21</p> <p>product 7:5 11:15 21:11 31:16,19 35:22 44:24 45:1 45:1,3,12 46:16 56:20</p> <p>production 11:18 35:17</p> <p>prong 58:9</p> <p>proof 11:1 13:6 13:10 14:3,4 51:2 58:9</p> <p>provide 19:11 28:1,2 30:5 39:15</p> <p>provided 7:1,4 11:5 14:23 18:20 19:19 29:22 32:14 32:18</p> <p>providing 32:13</p> <p>pulled 33:3,4</p> <p>pulling 42:15</p> <p>purposes 14:9 37:22</p> <p>put 12:7 14:21 17:10,21 18:1 23:10 25:17 27:22 28:19,20 29:13 31:7 33:9,13 35:4 36:6 37:24 39:22 41:21 43:8 48:18</p>
---	--	---	---

[put - safe]

Page 10

49:1,2 50:15,23 50:25 putting 50:13 56:4	realize 47:25 really 5:15 8:7 11:6 12:1 18:17 21:18 26:22 28:19 28:20 29:6 31:1,3 32:22 37:5 60:14 reason 17:10 reasonable 12:23 13:8,8 35:12,12 58:11 reasonableness 7:9 reasons 30:23 rebuttal 4:20 recall 18:9 recollection 57:25 record 4:4 10:18 27:16 49:9 59:12 61:3 62:4 red 18:15 22:8 reference 43:21 referring 44:8 relate 31:17 32:23 39:13 related 23:22,24 37:21 relates 24:9 relating 28:9 45:1 relatively 44:21 relevant 36:22 53:13,14 reliance 7:4 28:3 28:5 32:3 53:2,23 relied 7:7,10,14 9:8 10:4 11:19,23 12:3,6 17:3,18,22 18:6,11 19:5 20:7 21:17 22:20 24:13 24:15 25:3,7 26:14,19,23 27:7 27:15,23 28:24 29:2,15 30:3,7 33:17 34:21 38:19	39:16,25 41:13 42:9 43:18 44:5,9 44:11,17 46:11,25 47:16,22 49:12 51:17 52:7 54:7 57:13,15,16,16 58:1,7,17 relief 15:21 27:10 rely 17:13 29:3 31:11 32:8,8 40:4 47:19 48:12 53:16 55:6,6,23 56:10 remarkably 5:10 renew 12:11 reply 4:22 5:5 reports 4:18,20 4:22 represented 19:21 request 12:11 32:20 requested 10:11 10:25 11:1,12 requesting 38:15 required 15:22 34:23 35:13 requires 13:6 resolution 6:20 resolve 5:9 resolved 5:23 respect 4:9 5:25 13:11 46:10 50:20 51:25 response 32:19 44:1 responsible 19:22 32:22 rest 5:7 restored 16:20,20 41:18 result 13:9 21:15 35:1 results 29:18	reviewed 20:8 57:15,18 reviewing 6:8 right 4:5,10 5:19 6:7,16 7:10 8:15 11:23 13:4,13 17:5 20:20 24:6 25:2,5,25 32:8,9 32:17 33:14 36:6 39:25 40:17 41:21 41:23 42:1,25 43:17 44:25 45:2 45:3 49:3,4 51:23 56:13 57:6 60:11 60:12 ripe 6:20 59:23 risk 23:23 25:25 road 50:14,18 62:18 roll 32:2 rolling 7:16 rossman 3:8 6:14 7:20,22,24 8:16 8:22 47:2,5,9 48:24 49:23 50:19 51:17,21,23 52:1 52:11,13,25 53:3 53:25 54:10 55:15 55:17,21 56:2,9 56:13 60:5,10 61:2 run 31:5 33:14 34:15 47:22 49:7 59:10 running 29:23 runs 24:21
q			
quantity 19:2 question 32:1 35:17 37:14 46:2 52:23,25 questions 9:18 14:6 27:13 quickly 7:25 quinn 3:2 quite 8:3 quote 37:14 45:7 54:22 quoted 15:7 22:19 quotes 12:1 13:25 15:15,17 19:6,14 22:15,17 24:2,5 24:19 28:20,21 29:5,8,11,18 36:19 37:19,21 41:11,13,21 43:22 54:14,18,23 57:2			
r			
r 1:23 3:1 4:1 62:1 raised 5:22 9:1 ran 34:8,14 randomly 37:24 range 54:25 57:3 rates 41:1,5 rationalizations 46:14 react 59:21 reaction 60:10 read 51:12 55:25 58:25 59:1 ready 5:12 8:13 37:12 52:18 59:8 real 16:17 24:14 30:3 58:17			
			s
			s 3:1 4:1 8:12 32:20 52:4 sachs 32:19 47:13 47:19 53:7 safe 61:5

[sanction - suggestion]

Page 11

<p>sanction 32:12</p> <p>sanctions 9:1 35:16 38:16</p> <p>satisfactory 6:10</p> <p>save 15:8 42:14 42:22</p> <p>saw 42:7</p> <p>saying 16:4 17:20 21:21 24:5 39:12 43:19 46:19 47:18 49:6 52:9 53:19 54:10 55:4</p> <p>says 9:16 10:4 27:10 42:22</p> <p>scc 1:6,11 2:1</p> <p>schedule 4:9,11 5:23 8:20 30:20 30:20,23</p> <p>screen 29:16 43:17</p> <p>screens 10:3,3,23 11:22,25 12:20 13:2 25:10 28:8 42:22</p> <p>search 43:3</p> <p>searched 41:20</p> <p>searches 34:14</p> <p>second 33:3</p> <p>see 21:11 26:10 30:24 32:9 33:4 34:5,8 42:17 53:24</p> <p>seeing 34:12</p> <p>seek 25:5 35:14</p> <p>seeking 38:16</p> <p>seen 43:6</p> <p>self 55:17</p> <p>send 42:22</p> <p>senders 43:4</p> <p>sending 59:5</p> <p>senior 42:13</p> <p>sense 10:5,9 12:2 21:2</p>	<p>sensitive 61:2</p> <p>sensitivity 25:25</p> <p>sent 14:15 16:12 21:21 24:4 44:14 52:16 59:7</p> <p>separate 24:19 26:1</p> <p>september 4:25 4:25 5:6,6 10:21 11:22 12:8 41:10 41:20</p> <p>series 9:6</p> <p>set 19:3 26:13 28:4 29:11 30:6,6 40:7 43:11 44:4</p> <p>sets 48:5</p> <p>seven 20:9,16 22:16</p> <p>seventh 38:10</p> <p>shared 24:4 35:25</p> <p>sharing 29:6</p> <p>shelley 1:24</p> <p>shoebox 17:5</p> <p>shot 15:12</p> <p>shots 29:17</p> <p>shoulder 35:3</p> <p>show 14:3 20:20 26:10 40:6 42:13 48:4 49:4 52:5 53:9 59:15</p> <p>showed 47:22 55:4 56:4</p> <p>showing 52:16 58:5</p> <p>shown 9:6 39:24 46:11</p> <p>side 9:23 20:10,20 22:8</p> <p>sift 21:1</p> <p>significant 51:8</p> <p>simple 25:8</p> <p>simplification 30:19</p>	<p>simplify 6:2</p> <p>single 15:14</p> <p>sit 60:14</p> <p>sitting 38:6</p> <p>situation 9:13,19 38:6 39:22</p> <p>six 6:22 19:14 46:22</p> <p>sixteen 57:14</p> <p>size 42:1 48:7</p> <p>skaw 2:25 62:3,7</p> <p>skip 33:11</p> <p>slide 15:25 20:9 22:1,1,21 44:20 57:14</p> <p>slides 15:1 26:10</p> <p>small 44:21</p> <p>smoothly 59:10</p> <p>snow 60:14 61:5</p> <p>sold 34:6</p> <p>solution 26:20</p> <p>solutions 62:17</p> <p>solve 9:20</p> <p>somebody 39:1 43:17 57:8</p> <p>sorry 26:15</p> <p>source 25:22</p> <p>sources 48:11</p> <p>southern 1:2</p> <p>sp15 36:19</p> <p>space 8:13</p> <p>speak 26:18</p> <p>speaker 4:7</p> <p>specific 46:9 49:11 51:6 52:6</p> <p>specifically 28:3 30:3 58:16</p> <p>specifics 48:20</p> <p>speculative 45:19</p> <p>spent 50:21 52:17 53:1</p> <p>spot 13:4 50:10 55:8</p>	<p>spreadsheet 14:17 15:9,19 16:8,18 17:6,7,10 18:5 19:19,23 26:21 39:2 41:22 47:15 48:18 49:16 53:6</p> <p>spreadsheets 18:25 25:25 41:25 43:9</p> <p>spring 60:13</p> <p>stack 41:14 42:4</p> <p>stand 48:13 57:23</p> <p>start 5:15 16:13 20:17</p> <p>started 53:16</p> <p>starts 33:20</p> <p>stated 19:17</p> <p>states 1:1,15</p> <p>station 30:22</p> <p>stay 61:5</p> <p>steven 31:6</p> <p>stood 49:24</p> <p>stopped 8:8</p> <p>stored 15:14</p> <p>story 35:11 37:6 42:11</p> <p>streamline 6:2</p> <p>stuck 32:3</p> <p>study 60:7</p> <p>stuff 10:22</p> <p>subject 13:5 36:18</p> <p>subpoenaed 27:18</p> <p>substantial 5:17</p> <p>succeeding 7:18</p> <p>sudden 10:2</p> <p>suddenly 10:2 53:17</p> <p>suffer 21:19</p> <p>suffered 21:9,14</p> <p>suggest 53:20</p> <p>suggesting 13:22</p> <p>suggestion 15:11</p>
--	---	---	--

suisse 1:12 2:2 3:11 7:1,4,7 8:8 9:16 15:3,7 19:21 20:4,8 23:2 29:19 34:24 35:3 38:17 suisse's 24:18,23 suite 62:19 support 5:5 20:13 21:6 23:20 24:18 24:22 25:6 29:20 31:5,9 32:15 33:21 36:17 37:7 42:12 48:18 52:7 supported 16:23 17:2 supporting 15:3 supports 17:14 51:6 supposed 26:1 33:25 51:5 52:5 supposedly 33:15 sure 4:14 6:14 7:24 12:13 15:17 16:4 17:17 20:19 23:7 42:14,15 43:11 59:9,14 swaine 3:10 system 22:13 24:23 25:1 systems 24:18	52:22 taoko 15:9,19 16:8 18:4 41:10 43:24 target 48:4 teed 52:16 tell 10:5 26:22 36:20 38:14 48:15 54:10 56:23 telling 37:5 41:7 42:11 ten 10:19 22:1,15 22:16,18 29:5 terminated 22:12 terms 5:11 32:21 56:6 60:16 test 15:22 testified 45:17,24 46:23 testifies 9:6 testify 10:2 12:22 24:13 25:21,23 27:14,18 38:4 39:1 testimony 9:7,14 15:10 24:12 27:6 27:9 39:23 40:8 46:8,10,24 48:21 testimony's 48:9 58:1 thank 4:7 5:18 14:25 61:4,6,7 theme 38:7 thick 28:7 thing 10:15 12:19 16:5 17:14,18 18:12 31:1 38:24 things 21:16,17 22:10,19 25:15 26:16 28:17 30:4 30:14,21 33:21 34:18,25 41:25 42:2 48:12 53:12	53:14 57:12 think 6:1,11,15 7:2 10:8 12:12 15:2,25 19:9 25:24 30:17 31:22 34:17 35:24 37:4 39:7 42:21,23 43:19 50:2 53:18 55:7 56:23 59:3 59:15,21 60:5,7 60:15,19 61:2 thinking 25:8 third 29:17 thirteen 32:17 thirty 19:25 thought 7:11 24:10 29:21 34:10 35:22 47:21 53:14 53:15 58:15 thousand 40:12 40:25 thousands 18:8,8 35:5 three 15:2 19:25 throw 13:1 throwing 13:21 time 5:17 7:7 8:3 8:6,13 9:11 11:8,9 16:12,15,17 17:12 19:5 22:11,14,20 23:5 24:14 29:2 30:3 33:24 34:3 35:9 36:5 39:1 40:5 41:9 42:8 43:25 47:14,20 53:9 54:11,11,21 57:7 58:18 59:21 60:16,17,18,21 times 7:18 30:22 today 5:9,14 51:19 58:13 59:20 told 34:24 47:13 58:15	tomorrow 49:1 tool 10:10 tools 50:22 top 24:2 33:14 total 15:20 totality 54:24 tough 48:14 trade 11:10,11,11 18:10,18 20:14,25 21:5,6 22:2,4 24:9 24:17,18,22 25:4 25:7 28:22 29:5 31:9 33:1 37:2,15 40:19 48:10 50:17 50:17 traded 54:21 55:2 trader 7:6 9:6,18 20:6 21:17 22:5 23:2,8 25:11 26:18 27:10 28:24 29:8 37:16,17,18 39:3 40:3 48:12 48:13,17 49:11 50:21 54:18 traders 13:24 17:3,8,16 22:13 24:4 26:20 27:14 38:18 40:18,20 49:2 55:3 57:15 58:17 trades 18:17,22 18:23 20:11,12,21 20:22,23 22:12 23:5,25 35:5 36:5 37:20 40:13,17,25 41:21 50:14,16 51:7 trading 31:15 33:7 47:20 train 30:19,20,23 trains 30:21,21 transcribed 2:25
t			
t 62:1,1 table 52:20 take 8:18 9:3,3,4 12:4 43:2 44:15 47:11 taken 53:20 taker 53:19 talk 5:8,14 26:8 35:22 talked 50:2,17 talking 11:25 19:2 29:5 41:6 43:11			

[transcript - yeah]

Page 13

transcript 51:12 55:14,18,25 56:3 59:1,1 62:3 transmittal 14:8 treasure 28:4 trial 5:12 7:9 9:5 14:3 17:21 27:11 27:18 29:2 48:4 48:25 58:5,22,22 60:15 tried 17:24 18:1 47:21 53:10,12,13 trot 22:4 trouble 38:11 true 11:21 36:3 40:8 42:3,24 50:20 62:4 truth 26:10 54:9 54:11 truths 22:9 try 19:13 21:1 37:6 51:10 52:2 trying 7:19 8:3,5 8:10,19 31:19 35:4 47:10 50:23 57:6 turn 7:25 31:7 turning 22:1,21 38:14 47:17 twelve 31:7 two 15:1 19:6 20:23 21:10,14 30:4,11,14 47:11 50:21,22 51:12 53:1,11,22 type 58:7	unaware 42:3 understand 4:8 6:24 16:15 27:21 31:21,24 34:23 38:12,13 41:8 42:18,20 43:2,5 43:16 46:17,20,22 50:24 54:2 understanding 50:6 54:13 understands 53:5 understood 51:4 59:3 unfavorable 47:25 unidentified 4:7 unit 39:2 united 1:1,15 universe 15:20 58:16 unreasonable 40:24 unrelated 22:16 unsatisfactory 8:9 unsatisfying 9:23 untenable 46:4 upshot 22:18 use 12:11 13:16 13:22 19:7 34:18 45:9 47:14 50:23 51:10	various 50:14 vast 50:9 55:8 venn 21:7 verify 12:2 veritext 62:17 verse 49:24 view 13:10 30:1,5 30:8 virtually 55:23 vision 6:25 volatile 45:8 volatility 25:17,18 28:12,22 vs 1:11	went 16:19,23 25:15 35:21 41:12 43:8 50:16 56:6 west 45:7,10 wilful 34:24 window 57:7 witness 9:11 10:2 32:10 34:2 39:22 40:6,12 45:16 47:18 49:13,24 50:17 51:15,17 52:1 53:9 54:6,6 55:1,5,5 56:5,5 57:23,23,24 58:5 59:6 witness's 40:8 48:8 witnesses 31:5 32:15 40:20 45:24 46:9,23 48:17 52:17,18,21 59:8 word 7:3 13:16 words 7:3,5 17:1 38:7 39:21 work 8:3,3 worked 4:9,13 36:5 56:16,16 works 6:21 world 53:20 worried 8:25 worry 28:21 worth 51:12 wrong 6:3 21:11 21:13 44:23,24,25 45:1 47:20 55:8 wrote 42:2
u	v	w	x
u.s. 1:25 uh 15:6 23:9,19 36:15 51:23 un 52:13 unable 46:23	v 2:2 validate 12:7 44:12,17 45:2 56:3 valuations 29:20 value 24:25 29:20 37:2 values 21:12 22:12 23:22 29:16 37:1 51:7	walk 48:1 wall 58:25 want 7:17 9:2,4 9:13,19 11:18 14:6 24:19 28:15 39:14 40:2 42:13 45:9 48:3,3 58:24 58:25 59:24 wanted 7:17 15:13,17 18:5 22:3 33:24 wasted 35:16 waters 31:2 way 9:20 25:8 28:18 30:17,18 35:6 38:19,24 40:2 51:3 57:7 59:11 we've 6:1,16,16 8:5,7,11 12:4 35:16 38:8 40:18 week 7:8 10:22 24:15 weeks 6:22 19:24 46:22 weight 58:2 welcome 51:11	x x 1:4,8,13 y yeah 20:17 23:12 26:9 31:21 36:8 43:23,23 47:2,4,8 56:8 59:17

[year - zero]

Page 14

year 16:14 41:19 years 10:19 yep 31:25 york 1:2,17,17 3:5 3:13 27:17
z
zero 26:21 47:11 47:21 52:3